APPENDIX FOR RESPONDENTS

IN THE

Supreme Court of the United States

October Term, 1976

No. 75-562

ROSEBUD SIOUX TRIBE,
Petitioner,

v.

HONORABLE RICHARD KNEIP, et al.,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

WILLIAM J. JANKLOW
Attorney General
State of South Dakota
Pierre, South Dakota 57501

WILLIAM F. DAY, JR.
Attorney for the Four Counties
Winner, South Dakota 57580

TOM D. TOBIN
Special Assistant Attorney General
Winner, South Dakota 57580

DAVID L. KNUDSON
Special Assistant Attorney General
Sioux Falls, South Dakota 57102

Attorneys for Respondents.

O'CONNOR PRINTERS — SIOUX FALLS, S. DAK.

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[#13B]

McLaughlin report to Secretary of Interior
dated August 31, 1903

DEPARTMENT OF THE INTERIOR

Omaha, Nebraska, August 31st, 1903

The Honorable,
The Secretary of the Interior.

Sir:

I have the honor to report result of my negotiations with the Indians of the Rosebud Reservation, S. D., for the cession of their unallotted lands in Gregory County, South Dakota, as directed by Department letter of the 3rd ultimo, which enclosed for my guidance instructions prepared in the Office of Indian Affairs, dated June 30th, 1903.

My first council with the said Indians in relation to the cession was held at the Rosebud Agency on the 24th ultimo, and on the following day I submitted and carefully explained to them Senate Bill No. 7390, (Fifty-seventh Congress, Second Session), as directed. The Indians were opposed to several provisions of the bill from the beginning, and their consenting to consider it was only from their desire to appear courteous by giving at least perfunctory consideration to that submitted to them by the Department. They were unanimous in refusing to assent to the bill presented, and whilst a majority of the speakers demanded $5.00 per acre for the land embraced in the proposed cession, others expressed a willingness to enter into an agreement along the lines proposed in the bill, provided certain of its provisions were modified.

There was considerable difficulty in prevailing upon the Indians to remain in council to discuss the proposition, but I succeeded in having each adjournment provide for

reassembling at a certain time, that their principal objections to the bill might be thus ascertained. After several sessions had been held and becoming satisfied that certain modifications would have to be made to be acceptable to the Indians, I suggested that certain changes, which would meet their wishes, might be brought about, and outlined the modifications which I thought might be affected; whereupon they asked that the council might be adjourned one week, that they might return to their homes and discuss the matter among themselves at the headquarters of their respective districts; which request was granted.

Upon reassembling August 7th, I told them of the modifications which I had concluded to make, and would prepare a written agreement embracing the proposed changes and submit it to them on the following day, which, if concurred in by them, would be immediately ready for their signatures.

On August 8th I submitted the agreement, herewith transmitted, and explained it to the assembled Indians with the utmost care.

There were from 350 to 400 Indians present at this council, and after some discussion among themselves, they asked for an adjournment until the following Monday, August 10th, that they might council among themselves as to whether they would accept the new agreement as prepared or not. There were quite a number of Indians present whom I knew were ready to sign the agreement then and there, but I deemed it more advisable to comply with the request of the speakers, and gave them until Monday to consider the question.

Upon reassembling on Monday, August 10th, there were only about 75 Indians present, and I perceived that they were chiefly persons who were opposed to any agreement which did not provide for $5.00 per acre for the entire cession, and upon inquiry I learned that those favoring the agreement, which I had submitted to them the previous Saturday, had returned to their homes, but before leaving had directed Good Shield, lieutenant of the Agency police, to inform me that they were ready to sign the agreement at any time, but would prefer doing so when I reached their respective district headquarters.

At the beginning of this last general council there were, as before stated, about 75 Indians assembled, but others continued to come in during the council until about 125 were present. After considerable controversy I signed the agreement and invited those assenting to come forward and sign it; and notwithstanding that the council was dominated by the more active opponents of the proposition, 90 signatures were at once obtained, leaving only about 35 of those present who refused to concur.

This large percentage of the assemblage assenting to the provisions of the new agreement, together with the message delivered me by the lieutenant of police from persons favoring the agreement who had returned to their homes, encouraged me sufficiently to make a tour of the several districts of the Reservation, and meet the Indians of the different settlements at the headquarters of their respective districts. I travelled by team about 400 miles over the Reservation, 100 miles through the districts west of the Agency and about 300 miles in the districts east of the Agency, visiting them in the following order: – Spring Creek, Upper Cut Meat, Cut Meat Issue Station, Black Pipe, Little White River, Butte Creek, Big White River, Bull Creek and Ponca Creek, – thus consuming sixteen days, during which time I explained every feature of the agreement at the nine different points above stated, at each of which district headquarters I received quite a number of signatures, a total of 737, which number, whilst being 48 more than half of the male adult Indians of the Reservation, is 296 less than the required three-fourths majority.

I had two elements of opposition to contend with, viz: those of the Indians who were opposed to ceding the tract at any price and those who demanded $5.00 per acre for the entire cession, and the latter especially were strongly organized and very aggressive.

The minutes of the councils transmitted herewith is a clear record of the several sessions held at the Agency, and shows that the Indians would not assent to the bill presented. The basis of my estimate of the probable amount that would be realized by the Indians from the proposed cession, under the provisions of the new agreement submitted, is shown on pages 34 to 37 inclusive of said minutes.

Since my negotiating the agreement of September 14th, 1901, with said Indians for the identical tract of land, a railroad (the Bonesteel Branch of the Chicago & Northwestern System) has been built through Gregory County up to the eastern line of the Rosebud Indian Reservation, in consequence of which lands throughout that section of country have greatly enhanced in value, one quarter section, situated within a mile and a half of the eastern boundary of the Reservation, having recently sold for $5,000.00. This quarter section of land is well improved and contains very good buildings, adding much to its present value, but a great demand for lands in that neighborhood and the high price at which farming lands are held there being well known to the Indians, made it impossible for me to conclude an agreement along the lines proposed in the said Senate Bill, for the price per acre which I felt obliged to insist upon under my instructions.

The Agreement which I prepared and submitted to the Indians allowed $2.50 per acre for the school sections, as provided in the said Senate Bill, and a similar price per acre for three mission tracts, aggregating 198.67 acres and $2.75 per acre for lands entered under the homestead act, this difference in price being considered just and equitable from

the fact that the school and mission tracts were to be paid for by direct appropriation, the proceeds of which, amounting to $71768.37, would be immediately available after ratification of the agreement, while the homestead tracts would be paid for in six installments, running for a period of five years, with six months grace for the last payment.

Some of the lands that would remain undisposed of after the agricultural portions would be taken, if sold as provided in said Senate Bill — in tracts not to exceed 160 acres to any one person — could not be disposed of to any advantage, as portions of this proposed cession bordering along the Missouri River are very rough and broken and entirely devoid of vegetation, and they would not likely find a purchaser if purchasers were restricted to tracts of 160 acres only; but by selling this rough land in tracts of 160 acres without restriction as to the number of such tracts the highest bidder might purchase, a number of desirable ranges could be thus secured by stockmen and a much better price for the rough lands be thus obtained, — hence the wording in the last clause of Article IV, of the enclosed agreement.

I did everything in my power to obtain the consent of the requisite number of Indians, and after giving thirty-six days' time to the work, at the Agency and in traveling over the Reservation explaining the agreement at each of the district headquarters, and still lacking 296 signatures, I felt justified in discontinuing further efforts in that direction, and especially as many of the Indians assenting to the agreement did so simply to meet the wishes of the Department.

It is barely possible that by making from house to house canvass, visiting the Indians at their homes, the necessary number of signatures might be obtained, but even thus it would be very doubtful, and such canvass would consume several weeks' time, and feelings of distrust and dissatisfaction would doubtless be engendered thereby.

I feel that I did everything that was proper and reasonable in presenting the matter and endeavoring to obtain the necessary three-fourths majority of the Indians, and failing to obtain such majority, I felt justified in abandoning the work.

The determination of a number of the more influential Indians to hold out for such price as the lands will sell for to settlers, and the Indians receiving payment therefor from the proceeds of the sale of the lands to the settlers, exerts an influence over the Indians which cannot be overcome by any reasoning along the lines proposed and at the price per acre stipulated in the agreement.

The agreement which I submitted to the Indians, and which contains 737 signatures of concurrence (296 less than the required three-fourths majority), together with the minutes of the councils held with the Indians in relation to the matter, are herewith transmitted.

I am, Sir, very respectfully,
Your obedient servant,

James McLaughlin,
United States Indian Inspector

[#15E]

Proclamation of May 13, 1904.
33 Stat. 2354

A PROCLAMATION.

Whereas by an agreement between the Sioux tribe of Indians on the Rosebud Reservation, in the State of South

Dakota, on the one part, and James McLaughlin, a United States Indian Inspector, on the other part, amended and ratified by act of Congress approved April 23, 1904 (Public No. 148), the said Indian tribe ceded, conveyed, transferred, relinquished, and surrendered, forever and absolutely, without any reservation whatsoever, expressed or implied, unto the United States of America, all their claim, title, and interest of every kind and character in and to the unallotted lands embraced in the following described tract of country now in the State of South Dakota, to wit:

> Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel of latitude to its intersection with the tenth guide meridian; thence north along said guide meridian to its intersection with the township line between townships one hundred and one hundred and one north; thence east along said township line to the point of beginning.

The unallotted and unreserved land to be disposed of hereunder approximates three hundred and eighty-two thousand (382,000) acres, lying and being within the boundaries of Gregory County, South Dakota, as said county is at present defined and organized.

And whereas, in pursuance of said act of Congress ratifying the agreement named, the lands necessary for sub-issue station, Indian day school, Catholic and Congregational missions are by this proclamation, as hereinafter appears, reserved for such purposes, respectively:

And whereas, in the act of Congress ratifying the said agreement, it is provided:

> Sec. 2. That the lands ceded to the United States under said agreement, excepting such tracts as may be

reserved by the President, not exceeding three hundred and ninety-eight and sixty-seven one-hundredths acres in all, for sub-issue station, Indian day school, one Catholic mission, and two Congregational missions, shall be disposed of under the general provisions of the homestead and townsite laws of the United States, and shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof; and no person shall be permitted to settle upon, occupy, or enter any of said lands, except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry: *Provided*, That the rights of honorably discharged Union soldiers and sailors of the late civil and the Spanish war or Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridged; *And provided further*, That the price of said lands entered as homesteads under the provisions of this Act shall be as follows: Upon all lands entered or filed upon within three months after the same shall be opened for settlement and entry, four dollars per acre, to be paid as follows: One dollar per acre when entry is made; seventy-five cents per acre within two years after entry; seventy-five cents per acre within three years after entry; seventy-five cents per acre within four years after entry, and seventy-five cents per acre within six months after the expiration of five years after entry. And upon all land entered or filed upon after the expiration of three months and within six months after the same shall be opened for settlement and entry, three dollars per acre, to be paid as follows: One dollar per acre when entry is made; fifty

cents per acre within two years after entry; fifty cents per acre within three years after entry; fifty cents per acre within four years after entry, and fifty cents per acre within six months after the expiration of five years after entry. After the expiration of six months after the same shall be opened for settlement and entry the price shall be two dollars and fifty cents per acre, to be paid as follows: Seventy-five cents when entry is made; fifty cents per acre within two years after entry; fifty cents per acre within three years after entry; fifty cents per acre within four years after entry, and twenty-five cents per acre within six months after the expiration of five years after entry: *Provided*, That in case any entryman fails to make such payment or any of them within the time slated all rights in and to the land covered by his or her entry shall at once cease, and any payments theretofore made shall be forfeited, and the entry shall be forfeited and held for cancellation and the same shall be canceled: *And provided*, That nothing in this Act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry, as now provided by law, where the price of the land is one dollar and twenty-five cents per acre; *And provided further*, That all lands herein ceded and opened to settlement under this Act, remaining undisposed of at the expiration of four years from the taking effect of this act, shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior, not more than six hundred and forty acres to any one purchaser.

* * * * * *

Sec. 4. That sections sixteen and thirty-six of the lands hereby acquired in each township shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per acre, and the same are hereby granted to the State of South Dakota for such purpose; and in case any of said sections, or parts thereof, of the land in said county of Gregory are lost to said State of South Dakota by reason of allotments thereof to any Indian or Indians, now holding the same, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized, in the tract herein ceded, to locate other lands not occupied not exceeding two sections in any one township, which shall be paid for by the United States as herein provided in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

And whereas, all of the conditions required by law to be performed prior to the opening of said tracts of land to settlement and entry have been, as I hereby declare, duly performed:

NOW, THEREFORE, I, THEODORE ROOSEVELT, President of the United States of America, by virtue of the power vested in me by law, do hereby declare and make known that all of the lands so as aforesaid ceded by the Sioux tribe of Indians of the Rosebud Reservation, saving and excepting sections sixteen and thirty-six in each township, and all lands located or selected by the State of South Dakota as indenmity school or educational lands, and saving and excepting the W½ of the NE¼ and the E½ of the NW¼ of Sec. 25, T. 96 N., R. 72 W., of the 5th P.M., which is hereby reserved for use as a sub-issue station; and the NE¼ of the SW¼ of Sec. 23, T. 96 N., R. 72 W., of the 5th P.M., which is hereby reserved for use as an Indian day school; and saving and excepting the N½ of the NE¼ of

Sec. 25, T. 95 N., R. 71 W., of the 5th P.M., and the NW¼ of the NW¼ of Sec. 20, T. 95 N., R. 70 W., of the 5th P.M., both of which tracts are hereby reserved for use of the American Missionary Society for mission purposes; and the N½ of the NW¼ of Sec. 7, T. 96 N., R. 71 W., of the 5th P.M., which is hereby reserved for the Roman Catholic Church for use for mission purposes, will, on the eighth day of August, 1904, at 9 o'clock a.m., in the manner herein prescribed and not otherwise, be opened to entry and settlement and to disposition under the general provisions of the homestead and townsite laws of the United States.

Commencing at 9 o'clock a.m., Tuesday, July 5, 1904, and ending at 6 o'clock p.m., Saturday, July 23, 1904, a registration will be had at Chamberlain, Yankton, Bonesteel, and Fairfax, State of South Dakota, for the purpose of ascertaining what persons desire to enter, settle upon, and acquire title to any of said lands under the homestead law, and of ascertaining their qualifications so to do. To obtain registration each applicant will be required to show himself duly qualified, by written application to be made only on a blank form provided by the Commissioner of the General Land Office, to make homestead entry of these lands under existing laws and to give the registering officer such appropriate matters of description and identity as will protect the applicant and the government against any attempted impersonation. Registration can not be effected through the use of the mails or the employment of an agent, excepting that honorably discharged soldiers and sailors entitled to the benefits of section twenty-three hundred and four of the Revised Statutes of the United States, as amended by the act of Congress approved March 1, 1901, (31 Stat., 847) may present their applications for registration and due proofs of their qualifications through an agent of their own selection, having a duly executed power of attorney, but no person will be permitted to act as agent for more than one such soldier or sailor. No person will be permitted to register more than

once or in any other than his true name. Each applicant who shows himself duly qualified will be registered and given a non-transferable certificate to that effect, which will entitle him to go upon and examine the lands to be opened hereunder; but the only purpose for which he can go upon and examine said lands is that of enabling him later on, as herein provided, to understandingly select the lands for which he will make entry. No one will be permitted to make settlement upon any of said lands in advance of the opening herein provided for, and during the first sixty days following said opening no one but registered applicants will be permitted to make homestead settlement upon any of said lands, and then only in pursuance of a homestead entry duly allowed by the local land officers, or of a soldier's declaratory statement duly accepted by such officers.

The order in which, during the first sixty days following the opening, the registered applicants will be permitted to make homestead entry of the lands opened hereunder, will be determined by a drawing for the district publicly held at Chamberlain, South Dakota, commencing at 9 o'clock a.m., Thursday, July 28, 1904, and continuing for such period as may be necessary to complete the same. The drawing will be had under the supervision and immediate observance of a committee of three persons whose integrity is such as to make their control of the drawing a guaranty of its fairness. The members of this committee will be appointed by the Secretary of the Interior, who will prescribe suitable compensation for their services. Preparatory to this drawing the registration officers will, at the time of registering each applicant who shows himself duly qualified, make out a card, which must be signed by the applicant, and giving such a description of the applicant as will enable the local land officers to thereafter identify him. This card will be subsequently sealed in a separate envelope which will bear no other distinguishing label or mark than such as may be necessary to show that it is to go into the drawing. These

envelopes will be carefully preserved and remained sealed until opened in the course of the drawing herein provided. When the registration is completed, all of these sealed envelopes will be brought together at the place of drawing and turned over to the committee in charge of the drawing, who, in such manner as in their judgment will be attended with entire fairness and equality of opportunity, shall proceed to draw out and open the separate envelopes and to give to each enclosed card a number in the order in which the envelope containing the same is drawn. The result of the drawing will be certified by the committee to the officers of the district and will determine the order in which the applicants may make homestead entry of said lands and settlement thereon.

Notice of the drawings, stating the name of each applicant and number assigned to him by the drawing, will be posted each day at the place of drawing, and each applicant will be notified of his number and of the day upon which he must make his entry, by a postal card mailed to him at the address given by him at the time of registration. The result of each day's drawing will also be given to the press to be published as a matter of news. Applications for homestead entry of said lands during the first sixty days following the opening can be made only by registered applicants and in the order established by the drawing. The land officers for the district will receive applications for entries at Bonesteel, South Dakota, in their district, beginning August 8, 1904, and until and including September 10, 1904, and thereafter at Chamberlain. Commencing Monday, August 8, 1904, at 9 o'clock a.m., the applications of those drawing numbers 1 to 100, inclusive, must be presented and will be considered in their numerical order during the first day, and the applications of those drawing numbers 101 to 200, inclusive, must be presented and will be considered in their numerical order during the second day, and so on at that rate until all of said lands subject to entry under the homestead law, and desired thereunder have been entered. If any applicant fails

to appear and present his application for entry when the number assigned to him by the drawing is reached, his right to enter will be passed until after the other applications assigned for that day have been disposed of; when he will be given another opportunity to make entry, failing in which he will be deemed to have abandoned his right to make entry under such drawing. To obtain the allowance of a homestead entry, each applicant must personally present the certificate of registration theretofore issued to him, together with a regular homestead application and the necessary accompanying proofs, and make the first payment of one dollar per acre for the land embraced in his application, together with the regular land office fees, but an honorably discharged soldier or sailor may file his declaratory statement through his agent, who can represent but one soldier or sailor as in the matter of registration. The production of the certificate of registration will be dispensed with only upon satisfactory proof of its loss or destruction. If at the time of considering his regular application for entry it appear that an applicant is disqualified from making homestead entry of these lands his application will be rejected, notwithstanding his prior registration. If any applicant shall register more than once hereunder, or in any other than his true name, or shall transfer his registration certificate, he will thereby lose all the benefits of the registration and drawing herein provided for, and will be precluded from entering or settling upon any of said lands during the first sixty days following said opening.

Any person or persons desiring to found, or to suggest establishing, a townsite upon any of said ceded lands, at any point, may, at any time before the opening herein provided for, file in the land office a written application to that effect, describing by legal subdivisions the lands intended to be affected, and stating fully and under oath the necessity or propriety of founding or establishing a town at that place. The local officers will forthwith transmit said petition to the Commissioner of the General Land Office with their

recommendation in the premises. Such Commissioner, if he believes the public interests will be subserved thereby, will, if the Secretary of the Interior approve thereof, issue an order withdrawing the lands described in such petition, or any portion thereof, from homestead entry and settlement and directing that the same be held for the time being for townsite settlement, entry, and disposition only. In such event, the lands so withheld from homestead entry and settlement will, at the time of said opening and not before, become subject to settlement, entry, and disposition under the general townsite laws of the United States. None of said ceded lands will be subject to settlement, entry, or disposition under such general townsite laws except in the manner herein prescribed until after the expiration of sixty days from the time of said opening.

All persons are especially admonished that under the said act of Congress approved April 23, 1904, it is provided that no person shall be permitted to settle upon, occupy, or enter any of said ceded lands except in the manner prescribed in this proclamation until after the expiration of sixty days from the time when the same are opened to settlement and entry. After the expiration of the said period of sixty days, but not before, and until the expiration of three months after the same shall have been opened for settlement and entry, as hereinbefore prescribed, any of said lands remaining undisposed of may be settled upon, occupied, and entered under the general provisions of the homestead and townsite laws of the United States in like manner as if the manner of effecting such settlement, occupancy, and entry had not been prescribed herein in obedience to law, subject, however, to the payment of four dollars per acre for the land entered, in the manner and at the time required by the said act of Congress above mentioned. After the expiration of three months, and not before, and until the expiration of six months after the same shall have been opened for settlement and entry, as aforesaid, any of said lands remaining undisposed of may also be settled upon, occupied, and

entered under the general provisions of the same laws and in the same manner, subject, however, to the payment of three dollars per acre for the land entered in the manner and at the times required by the same act of Congress. After the expiration of six months, and not before, after the same shall have been opened for settlement and entry, as aforesaid, any of said lands remaining undisposed of may also be settled upon, occupied, and entered under the general provisions of the same laws and in the same manner, subject, however, to the payment of two dollars and fifty cents per acre for the land entered, in the manner and at the times required by the same act of Congress. And after the expiration of four years from the taking effect of this act, and not before, any of said lands remaining undisposed of shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior, not more than six hundred and forty acres to any one purchaser.

The Secretary of the Interior shall prescribe all needful rules and regulations necessary to carry into full effect the opening herein provided for.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 13th day of May, in the year of our Lord one thousand nine hundred [SEAL.] and four, and of the Independence of the United States the one hundred and twenty-eighth.

Theodore Roosevelt

By the President:

Francis B. Loomis,

Acting Secretary of State.

[*19A]

HOMESTEAD SETTLERS UPON CERTAIN LANDS

January 5, 1905. Ordered to be printed.

Mr. Hansbrough, from the Committee on Public Lands, submitted the following

REPORT

[To accompany S.5799.]

The committee on Public Lands, to whom was referred the bill (S. 5799) to provide for the extention of time within which homestead settlers may establish their residence upon certain lands which were heretofore a part of the Rosebud Indian Reservation within the limits of Gregory County, S. Dak., having had the same under consideration, beg leave to report the bill back with the recommendation that it be amended, and that as amended it do pass. . . .

The suggested amendments are as follows:

In line 9, page 1, after the word "Approved," insert:

April 23, 1904, and the homestead settlers on the lands which were heretofore a part of the Devils Lake Indian Reservation, in the State of North Dakota, opened under an act entitled "An act to modify and amend an agreement with the Indians of the Devils Lake Reservation, in North Dakota, to accept and ratify the same as amended, and making appropriation and provision to carry the same in effect," approved April 27, 1904.

In Line 5, page 2, add the letter "s" to the word "Act," so as to make it read "acts."

The portion of the Rosebud Indian Reservation which was subject to the legislation provided by the act of April 23, 1904, was thrown open for settlement by the proclamation of the President of the United States under date of May 13, 1904. Under the terms of this proclamation each qualified applicant was registered between July 5 and July 23, and entry was made by the successful applicants beginning on August 8 and continuing until September 10. The lands in the Devils Lake Indian Reservation were thrown open for settlement by proclamation of the President of the United

States under date of June 2, 1904. Under the terms of this proclamation each qualifed applicant was registered between August 8, and August 20, and entry was made by the successful applicants beginning on the 6th day of September. Under law, and the regulations of the General Land Office thereunder, settlement must be made within six months from the date of filing. This would compel the homesteaders who seek to secure lands within the confines of that part of the Rosebud Indian Reservation thrown open to entry to make their settlement during the month of February, and the settlers on the land within the Devils Lake Reservation to make their settlement in the month of March.

The climatic conditions prevailing during the months of February and March in North and South Dakota are such as to render it difficult, if not dangerous, for settlers to go upon the land and attempt to construct a residence thereon. In view, therefore, of these conditions and of the fact that the settlers who are affected by the provisions of the proposed legislation did not have the choice of the time at which they made their filings, but had to do so at the time set in the proclamation of the President, it seems just that the time within which they have to make their settlements upon the land should be extended until the 1st of May, at which time clima.ic conditions are such as to render it feasible for them to construct necessary buildings. A further fact which influences the committee in making a favorable report is that these settlers are under conditions different to those affecting the ordinary homestead settler. Entrymen on the reservations in question have to pay $4 an acre in the case of the Rosebud Reservation and $4.50 an acre in the case of the Devils Lake Reservation, $1 and $1.50 per acre, respectively, being paid in advance at the time of entry.

Those who took advantage of the President's proclamation were, as far as can be ascertained, people in poor circumstances, and they desired to avail themselves of all the time they could to make the money necessary to complete

payments on the land. For this reason settlement was not made last fall, that being the time when the harvest season being in progress good wages could be earned. If they had made settlement upon the land in the fall, moreover, they would have been under the necessity of the expenditure of further money to support them during the winter time through which they would have no opportunity of securing work in the vicinity of their new home, and of, therefore, making their expenses.

Amend the title so as to read:

A bill to provide for the extension of time within which homestead settlers may establish their residence upon certain lands which were heretofore a part of the Rosebud Indian Reservation within the limits of Gregory County, South Dakota, and upon certain lands which were heretofore a part of the Devils Lake Indian Reservation, in the state of North Dakota.

[#19B]

HOMESTEAD SETTLERS UPON CERTAIN LANDS

February 3, 1905.—Referred to the House Calendar and ordered to be printed.

Mr. Martin, from the Committee on the Public Lands, submitted the following

REPORT

[To accompany S. 5799.]

The Committee on the Public Lands, to whom was referred the bill (S. 5799) to provide for the extention of time within which homestead settlers may establish their residence upon certain lands which were heretofore a part of the Rosebud Indian Reservation within the limits of Gregory County, S. Dak., having had the same under consideration, beg leave to report the bill back with the recommendation that it do pass.

The portion of the Rosebud Indian Reservation which was subject to the legislation provided by the act of April 23, 1904, was thrown open for settlement by the proclamation of the President of the United States under date of May 13, 1904. Under the terms of this proclamation each qualifed applicant was registered between July 5 and July 23, and entry was made by the successful applicants beginning on August 8 and continuing until September 10. The lands in the Devils Lake Indian Reservation were thrown open for settlement by proclamation of the President of the United States under date of June 2, 1904. Under the terms of this proclamation each qualifed applicant was registered between August 8 and August 20, and entry was made by the successful applicants beginning on the 6th day of September. Under law, and the regulations of the General Land Office thereunder, settlement must be made within six months from the date of filing. This would compel the homesteaders who seek to secure lands within the confines of that part of the Rosebud Indian Reservation thrown open to entry to make their settlement during the month of February, and the settlers on the land within the Devils Lake Reservation to make their settlement in the month of March.

The climatic conditions prevailing during the months of February and March in North and South Dakota are such as to render it difficult, if not dangerous, for settlers to go upon the land and attempt to construct a residence thereon. In view, therefore, of these conditions and of the fact that the settlers who are affected by the provisions of the proposed legislation did not have the choice of the time at which they made their filings, but had to do so at the time set in the proclamation of the President, it seems just that the time within which they have to make their settlements upon the land should be extended until the 1st day of May, at which time climatic conditions are such as to render it feasible for them to construct necessary buildings. A further fact which

influences the committee in making a favorable report is that these settlers are under conditions different to those affecting the ordinary homestead settler. Entrymen on the reservations in question have to pay $4 an acre in the case of the Rosebud Reservation and $4.50 an acre in the case of the Devils Lake Reservation, $1 and $1.50 per acre respectively, being paid in advance at the time of entry.

Those who took advantage of the President's proclamation were, as far as can be ascertained, people in poor circumstances, and they desired to avail themselves of all the time they could to make the money necessary to complete payments on the land. For this reason settlement was not made last fall, that being the time when the harvest season being in progress good wages could be earned. If they had made settlement upon the land in the fall, moreover, they would have been under the necessity of the expenditure of further money to support them during the winter time through which they would have no opportunity of securing work in the vicinity of their new home, and of, therefore, making their expenses.

[#20A]

40 Cong. Rec. 3460-65

INDIAN APPROPRIATION BILL

Mr. SHERMAN. I move that the house resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the Indian appropriation bill; and pending that, Mr. Speaker, I ask unanimous consent that general debate be concluded today, and that the time be controlled by the gentleman from Texas [Mr. Stephens] and myself in equal parts.

The SPEAKER. The gentleman from New York asks unanimous consent that general debate upon the Indian appropriation bill be closed to-day and that the time be controlled half and half by the gentleman from New York [Mr.

Sherman] and the gentleman from Texas [Mr. Stephens]. Is there objection?

Mr. STEPHENS of Texas. I have no objection to that arrangement, Mr. Speaker.

There was no objection.

The motion of Mr. SHERMAN was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 15331 — the Indian appropriation bill — with Mr. CURRIER in the chair.

Mr. SHERMAN. Mr. Chairman, I yield one hour to the gentleman from South Dakota [Mr. Burke].

Mr. BURKE of South Dakota. Mr. Chairman, as a member of the committee that reported this bill I desire to submit a few observations on the bill and upon the general subject of Indian legislation. In South Dakota we have a population of something more than 20,000 Indians. I have been a resident of that State about twenty-four years. I have resided in the section of the State adjacent to the Sioux Indian reservations, and therefore in discussing the subject of Indian legislation I am going to speak from the standpoint of one who knows something about the Indians from actual contact and observation.

Mr. Chairman, whenever legislation is suggested in this House for the benefit and advancement of the Indians, or to open for settlement Indian reservations that are not used by the Indians, there are certain people throughout the East that show signs of hysteria and express alarm and fear that the "poor Indian," as they say, is again about to be robbed or outraged. I propose to show, Mr. Chairman, that instead of the Indian being mistreated, that he has been most generously treated, treated better in many respects than our white citizens.

The bill before the committee, as suggested by the chairman, is new in form. The committee considered that the old form, which had been in use many years, was not such a

form as presented the different subjects that the bill covers in the most intelligent manner, and therefore they have adopted and presented here a new form of a bill which I am certain, as stated by the chairman yesterday, will meet with the approval of the Members of the House when they become familiar with the changes and the new form.

The bill contains appropriations for absolute gratuities of $585,000. About that amount is appropriated every year as a gratuity. The bill contains an item for the support of schools of $3,558,405, and, as the chairman of the committee stated yesterday, practically that amount is a gratuity. In other words, we expend that amount of money annually for the education of the Indians that is paid out of the Treasury as a gratuity.

I want to call the attention of the House to the Indian allotment law enacted in 1887. That act, recognizing that the Indians had certain rights in the land which they occupy as reservations, provided for alloting to each individual Indian a certain quantity of land, and to each head of a family, to each child over 18 years old, and also to each child, regardless of its age, under 18 years. That provision gives to an Indian with a family of four or five children from a section to a section and a half of land.

In the Sioux Reservation in South Dakota, with which I am familiar, the allotment features of the law opening that portion which was ceded in 1889 increased the area of the allotment by doubling the amount as provided in the original allotment act, so that allotments are made in quantities as follows:

> To each head of a family, 320 acres; to each single person over 18 years of age, one-fourth of a section; to each orphan child under 18 years of age, one-fourth of a section; and to each other person under 18 years now living, or who may be borne prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-eighth of a sec-

tion: *Provided*, That where the lands on any reservation are mainly valuable for grazing purposes an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.

So that an Indian with a family may take 640 acres of grazing land or 320 acres of agricultural land; to each child over 18 years of age, 320 acres of grazing land, and to each child under 18 years of age, 160 acres of grazing land.

Now, in the case of an Indian with five children there is awarded to him and his family something like 1,400 acres if it is grazing land, or one-half that amount of agricultural land. The land is held in trust for a period of twenty-five years. It is not subject to taxation, and it becomes his absolute property at thion of twenty-five years, and he has the benefit and use of it in the meantime without paying 1 cent of taxation either for schools, for maintaining the township and county or State government.

This allotment law was, as I stated, enacted about twenty years ago, and it contemplates that after the allotment to the Indians on the reservations has been made, then the surplus land or unused land, that the Indians do not require, shall be disposed of and sold under the provisions of the homestead law. And it provides further that the proceeds of the sale of those unused lands shall be paid into the Treasury for the support and maintenance and education and civilization of the tribe.

Mr. Chairman, it has become necessary, in order to secure legislation disposing of these surplus lands, that we shall provide that the money, or a large portion of it, received from the sale of the lands shall be paid to the Indians per capita in cash. In the meantime, we are appropriating from three to four million dollars annually from the Treasury for the education of these same Indians that we are paying money to for surplus and unused lands that we are selling, after they have taken their allotments.

Mr. STEPHENS of Texas. Will the gentleman allow a question?

Mr. BURKE of South Dakota. Yes.

Mr. STEPHENS of Texas. I understand the gentleman to state that about twenty years ago Congress passed a bill permitting the Secretary of the Interior to allot lands to the Indians separately, so that the rest of the reservation might be thrown open; that is the law the gentleman refers to?

Mr. BURKE of South Dakota. Yes.

Mr. STEPHENS of Texas. Does the gentleman know of a single instance where the present Secretary of the Interior has complied with that law and under it allotted lands to the Indians out of their reservations?

Mr. BURKE of South Dakota. Mr. Chairman, I would answer that by saying that this law authorizes the Secretary of the Interior to negotiate an agreement with the Indians for a sale of these unused lands, and there have been many such agreements sent to this House that were negotiated under the provision I have referred to in the original allotment law.

Mr. STEPHENS of Texas. Mr. Chairman, can the gentleman point out one negotiated by the present Secretary, where he has allotted lands to the individual Indians?

Mr. BURKE of South Dakota. I most certainly can. In South Dakota he has sent to this House one referring to the sale of a portion of the Rosebud Reservation, that portion located in Gregory County, and another relating to the Lower Brule Reservation.

Mr. STEPHENS of Texas. That was not done in response to the act of Congress passed twenty years ago, was it?

Mr. BURKE of South Dakota. It was, Mr. Chairman. It was under authority given to the Secretary under the law to which I have referred.

Mr. STEPHENS of Texas. Can the gentleman state why there is a difference made between his State and New Mexico and Arizona?

Mr. BURKE of South Dakota. I am not familiar with the conditions in the two Territories named by the gentleman.

Mr. STEPHENS of Texas. Or Oklahoma?

Mr. BURKE of South Dakota. Or Oklahoma. My recollection is that we did have a treaty or an agreement pertaining to some portion of the Kiowa and Comanche reservations, with which the gentleman is familiar, that was negotiated under the present Secretary of the Interior.

Mr. STEPHENS of Texas. That was in 1892, before Mr. Hitchcock's administration.

Mr. BURKE of South Dakota. That may be true.

Mr. FITZGERALD. Mr. Chairman, while many agreements have been negotiated, none have been ratified, practically none, in the form in which they were negotiated. And that is what confuses the gentleman from Texas [Mr. STEPHENS].

Mr. BURKE of South Dakota. Mr. Chairman, it is true that since the decision by the Supreme Court in what is known as the "Lone Wolf case" treaties or agreements have not been ratified, but legislation has been enacted along the line of agreements substantially complying therewith. I desire to call attention to a provision of the allotment law to which I have referred substantiating what I have said as to what shall be done with moneys that may be received from the sale of the unused portions of Indian reservations. In section 5 of that law I read this paragraph:

> And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians to whom such reservations belong, and the same, with interest thereon at 3 per cent per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof.

Mr. Chairman, in the bill dividing the great Sioux Reservation in South Dakota into separate reservations that identical language was incorporated, showing that it was the

policy and the intention of Congress when the original allotment law was passed, after giving to an individual Indian a certain tract of land in the form of an allotment, to have the balance of the lands which constituted the reservation sold and disposed of and the proceeds put in the Treasury for the support, education, and civilization of those Indians. I merely refer to this, Mr. Chairman, for the purpose of showing that, instead of mistreating the Indians, we are dealing with them in a manner that is extremely generous. I am not criticising that policy, because there is no question that under the system of education the Indian is making very rapid progress. I believe that in the past ten years, under the policy that has prevailed dealing with the Indians of this country, they have made greater progress than they made in the fifty previous years.

As the chairman of the committee stated yesterday, instead of appropriating money and buying rations and issuing them to Indians regardless of whether they are able to work or not, to-day we are legislating that moneys appropriated for the support of Indians may be commuted instead of giving them a ration by requiring them to work and paying them for their labor. For many years it was thought that the Indian ought not to work; that he was different from a white man, and there was a certain sentiment that controlled legislation relating to him, and he was supposed to be permitted to live in absolute idleness and roam over the country hunting and fishing without having to think once or care where his next meal was coming from, because he knew that he could go to the agency and there he would have issued to him meat and other provisions, as well as clothing. Under the policy that prevails now an Indian who is able-bodied, who is capable of laboring, is given to understand that if he wants to eat he has got to work the same as a white man, and throughout my State, where, as I say, we have a great many Indians, that system has worked with good results. We have Indians employed not only upon the reser-

vations in the construction of roads, in the construction of irrigation works, in hauling freight for the agencies, but in many instances Indians are employed off the reservation the same as any other citizen of the State, and some of them in the western sections of the State are working on the railroad as section hands.

The old Indian — the Indian who has had no opportunity whatever to progress, who is aged and infirm — the Government still cares for, as it formerly did all Indians, by issuing to him rations and providing him with food and clothing. Mr. Chairman, many Members of this House will recollect in the Fifty-seventh Congress that there was passed a bill known as the "Rosebud bill." That bill provided for the disposition and sale of that portion of the Rosebud Reservation in South Dakota located in Gregory County. Before the measure became a law there was a very strenuous opposition, not in this House, but from sources entirely independent of this House and originating at Philadelphia. The Indian Rights' Association, assuming to know the facts and believing that the proposed legislation of the bill, claiming that it was going to do a wrong to the Indians, and that it was dishonest for that reason.

Notwithstanding that opposition and after some concessions were made as to the price of the land, the bill became a law. The bill provided that the land should be disposed of to settlers under the provisions of the homestead law, under rules and regulations to be prescribed by the Secretary of the Interior, and under the authorization the Department applied what is known as the "lottery system." The lottery system has been in use now in the opening of two or three reservations, and the only opposition to the system, the only denunciation of the system, has come from the extreme East and in remote parts of the country from where the law has been applied. The Rosebud measure has been criticised since it was enacted by certain magazine and other writers, and particularly has the feature relative to the

lottery system been denounced. Now, Mr. Chairman, the Rosebud bill, as I stated, opened to settlement about 400,000 acres of land. In the tract affected there were something over 500,000 acres. Before the law was applicable the Indians had the right to locate and select allotments in the portion that was affected by the bill. They proceeded to locate and select their allotments and took out of the tract 100,000 acres of land, and I want to say that Indians, in many respects, are like white men and they know good land from bad land, and when they took that hundred acres out of that tract for their allotments they took the very best parts of it, and the parts of it especially that were along the streams and the creeks. That law provides that the balance of the land shall be sold; first, for all lands taken in the first three months the price to be $4 an acre; after the three months and for the next three months the price to be $3 per acre, and after that the price to be $2.50 an acre. Mr. Chairman, notwithstanding the fact that the Indians had taken their allotments as the allotment law provided, that they are to possess this land for twenty-five years without being obliged to pay any taxes whatever, notwithstanding that the value of these lands is to be greatly enhanced by reason of the adjoining lands being settled upon and cultivated by the white settler, notwithstanding the provisions to which I have referred in the general allotment law and which is also in the law which created the Rosebud Reservation, instead of providing that the money should be placed in the Treasury for the education and the civilization and advancement of these Indians the law provides that it shall be paid out to them, one-half of it per capita in cash. Mr. Chairman, I want to state now that in the future, from the standpoint of the best interests of the Indians, to say nothing of following the law which we have on the statute books, I shall protest against moneys being paid to Indians in cash that may be realized from the sale of lands which they do not use and do not occupy.

Mr. FITZGERALD. Mr. Chairman, will the gentleman yield for a question?

Mr. BURKE of South Dakota. Certainly.

Mr. FITZGERALD. Does the gentleman object to the policy of paying part of the proceeds of those sales in cash to the Indians?

Mr. BURKE of South Dakota. I most certainly do, Mr. Chairman, and I shall protest against any measure that may come up in this House again containing such a provision.

Mr. FITZGERALD. Under the Rosebud bill provision was made that a very large percentage of the funds derived should be paid in cash to the Indians?

Mr. BURKE of South Dakota. Yes, sir.

Mr. FITZGERALD. Did the gentleman protest against that feature in that bill?

Mr. BURKE of South Dakota. Mr. Chairman, it was necessary to have the bill apparently upon its face extremely liberal toward the Indians in order to overcome the opposition represented by my distinguished friend from New York.

Mr. FITZGERALD. The opposition represented by myself, the gentleman said, never urged that large percentage payments be paid to the Indians. If the gentleman recollects, he himself desired that large percentage payments be made in order to allay the fears and stop the protests of the Indians who owned these lands that were to be disposed of.

Mr. BURKE of South Dakota. Let me say to the gentleman that it is another argument against the system of negotiating treaties or agreements with the Indians. That provision was put in the Rosebud bill because it was in the agreement with the Indians. It was put in the agreement with the Indians because they could not make an agreement unless it was in.

Mr. FITZGERALD. But the gentleman knows that he is one of those who have been urging most strenuously that Congress ignore completely the terms of these agreements.

Mr. BURKE of South Dakota. Yes, and I shall continue to urge that.

Mr. FITZGERALD. And I simply wish to call attention to the fact that in the bill opening a reservation in his own district he desired to have as much put into the bill as was possible in order to prevent the outcry on the part of the Indians.

Mr. BURKE of South Dakota. Mr. Chairman, my position on the question of disposing of Indian lands is and will hereafter be governed entirely by what I believe to be for the best interests of the Indians.

Mr. FITZGERALD. If it would not interrupt the gentleman's statement, I wish he would give the House this information, namely, the amount of acres disposed of under the Rosebud bill, and the maximum price, and each of the other prices.

Mr. BURKE of South Dakota. A little further on I will give the gentleman exactly that information. I was about to say, Mr. Chairman, that I am hereafter going to favor legislation that I believe is for the best interest of the Indians from every standpoint. The Indians of this country, in one sense, are mere children, and it is absurd for Congress, that has jurisdiction over them, when it considers some measure is advisable to promote their interests, to have to go to them and ask them to consent that they be dealt with honestly and, as Congress believes, wisely. And it is because of that system that this condition has arisen by which moneys are being squandered that otherwise should be husbanded and expended for the advancement and education of the Indian as the original allotment law contemplated.

Mr. STEPHENS of Texas. Would the gentleman be willing to support a measure that would provide that all the lands in the Indian reservations containing valuable minerals might be thrown open under the United States mining laws, and the proceeds thereof applied to the In-

dians, as another Indian fund — a general bill of that kind covering all mineral reservations?

Mr. BURKE of South Dakota. Without having opportunity, Mr. Chairman, to give the question any consideration, I am inclined to say no. Perhaps I do not understand the question.

Mr. STEPHENS of Texas. Then can the gentleman give any reason why a great many million acres of land containing valuable mineral deposits should be locked up in Indian reservations and indefinitely withheld from the American miner and prospector?

Mr. BURKE of South Dakota. If that condition prevails, Mr. Chairman, it is not within the section of the country with which I am familiar.

Mr. STEPHENS of Texas. The gentleman is very fortunate in living in the section of the country that he does. I hope the gentleman will remove his place of residence to the great Territories of the Southwest, where these conditions do prevail, namely, New Mexico and Arizona.

Mr. BURKE of South Dakota. I will state to the gentleman that I have the good fortune to live in a section of country that has the richest hundred square miles in the world, known as the Black Hills.

Mr. STEPHENS of Texas. I am glad to know that the gentleman is so fortunately situated, and I hope he will turn his attention outside of his own balliwick and assist those Territories that have no voting representation on this floor, and that are not entitled to votes here, to secure their rights. They should have separate statehood, and their representatives on this floor and in the Senate, so that these Indian tracts of land may be thrown open and that country may be developed.

Mr. BURKE of South Dakota. It has been asked, Mr. Chairman, what disposition was to be made of the proceeds of the sale of this Rosebud Reservation other than the one-half which is to be paid to them per capita in cash. I wish to

say that the law provides that the balance of the money shall be expended for stock cattle, and that cattle shall be issued to the Indians. So that while they do not get all of the money in cash, only getting half of it, the other half is given to them in cattle, or the equivalent of cash. Now, notwithstanding, Mr. Chairman, the provision of the allotment law to which I have referred, that the moneys received from the sale of lands similar to the Rosebud lands shall be placed in the Treasury for the support and education of the Indians, we are paying out the entire amount to the Indians and at the same time we are making appropriations from the Treasury to educate these Indians that are benefited by the sale of the Rosebud lands.

The original agreement with the Rosebud Indians provided that they should be paid for the lands the sum of $2.50 an acre, which would have made an aggregate sum of $1,040,000. When we proposed the measure which finally became a law, which does not obligate the Government to pay for any of it except sections 16 and 36, which are ceded to the State for school purposes, it was claimed that unless there was a price put upon the land, some claiming as high as $10 an acre, that it would be disposed of for a low price and the Indians would not receive anything like as much as they would have received if the agreement had been carried out, viz, a million and forty thousand dollars.

Mr. Chairman, that bill became operative, so far as the opening was concerned, on the 8th day of August, 1904, about a year and a half ago. I have here from the General Land Office a letter signed by the Commissioner, giving a statement of the amount of lands that have been disposed of at the different prices and the amount of money that has been received and placed in the Treasury to the credit of the Indians up to December 31, 1905. This statement shows conclusively that when the matter is finally completed and the land is all disposed of and paid for, instead of the Indians receiving $1,040,000 they will probably receive from $200,-

000 to $400,000 in excess of that amount. For the benefit of the House I would like, Mr. Chairman, to have the letter read which I send to the Clerk's desk; also a letter from the Secretary of the Treasury, showing the amount of money that has been paid into the Treasury by reason of sales of land in the Rosebud Reservation, in Gregory County, to which I have referred.

The Clerk read as follows:

Department of the Interior,
General Land Office,
Washington, D.C., February 7, 1906.

Hon. Charles H. Burke,
House of Representatives.

SIR: I have the honor to acknowledge the receipt of your letter of January 27, 1906, requesting to be furnished with a statement up to and including December 31, 1905, of the lands disposed of in Gregory County, S. Dak., in what was formerly the Rosebud Reservation, opened to entry under the provisions of the act of April 23, 1904 (33 Stat., 254).

In response to your inquiries I have to state—

First. During the period ending on the date above mentioned there were made 1,881 homestead entries of the $4 class, embracing approximately 300,960 acres.

Second. One hundred and sixty-two homestead entries of the $3.00 class, embracing 21,898.87 acres.

Third. Three hundred and four homestead entries of the $2.50 class, embracing 38,045.82 acres.

Fourth. Four hundred and twenty homestead entries, all of the $4 class, upon which the first payment of $1 per acre had been made, were relinquished and the land embraced therein reentered. The area covered by these entries was 64,969.47 acres, and the money received therefore, $64,969.47.

Fifth. Twenty-nine thousand five hundred and forty-three and fifty one-hundredth acres were granted to the

State under the provisions of section 4 of the act above referred to. In accordance with the terms of said act the Indians received $2.50 per acre for said lands, amounting in the aggregate to $73,858.75, and this amount has been paid into the Treasury for the credit of the Indians on account of said school lands.

Sixth. Homesteads embracing 29,532.19 acres of the $4 grade were commuted, and $118,128.76 was received therefor. One homestead entry of 160 acres, perfected under sections 2292, 2304, and 2305, Revised Statutes, the entryman having four years' military service to his credit and having paid the full price of the lands, is included in the area given.

Seventh. There are approximately 110,080 acres remaining unappropriated, which would make 688 homestead entries of 160 acres each.

Eighth. No contests arose by reason of different parties claiming the same tract during the sixty-day period following the day of opening (August 8, 1904), during which period a preference right of entry was given to parties who had registered, and no such contests could arise for the reason that during this period rights were initiated by entry of filing and not by settlement under the provisions of the President's proclamation.

The order in which entries of this land should be made was determined by registration and drawing, in accordance with a plan which was adopted by President McKinley and first used in opening to entry the Kiowa-Comanche Reservation, in Oklahoma, in 1901. Since that time it has also been used in opening the Rosebud, Devils Lake, and Uintah reservations, embracing in the aggregate three and one-half million acres of land. In these openings there were registered in the aggregate 304,000 people and in none of them were those participating subjected to any great hardship and to but little inconvenience. No complaint of any

character has reached this office, either as to the fairness of the method employed, its execution, or the results obtained.

The figures given in the first, second, third, and fourth items are approximately correct, and it is believed will serve your purpose, although some slight changes might be made therein upon a more careful inspection of the records.

Very respectfully,

W. A. Richards,
Commissioner.

Treasury Department, Office of the Secretary,
Washington, January 30, 1906.

Hon. Charles H. Burke,
House of Representatives.

Sir: In reply to your letter of the 27th instant asking for a statement of the amount paid into the Treasury to December 31, 1905, as proceeds of Rosebud Reservation sold under section 5, act of April 23, 1904, I would state that the sum of $434,907.87 has been so received and covered.

By the same act Congress appropriated the sum of $75,000, or so much thereof as might be necessary, to pay for sections 2 and 16, granted to the State of South Dakota. The net amount required to execute this provision of the law is $73,858.75, making a total credit on account of land disposed of, of $508,766.62.

There has been disbursed from this appropriation the sum of $87,280.20, leaving a balance available of $421,486.42.

Respectfully,

L. M. Shaw, *Secretary.*

Mr. BURKE of South Dakota. Mr. Chairman, it appears by these letters that more than half a million dollars has already been paid into the Treasury, notwithstanding but

very few have yet made final entry and final payment, not having been there long enough to do so and comply with the law. I think it will be seen that there will be nearly, if not quite, another million dollars received from the sales of these lands, making a total of about a million and a half dollars as against the million and forty thousand dollars they would have received under the treaty.

I want to refer further to this letter which has been read from the Commissioner, which states that under this so-called "lottery system" there never has been any complaint from anyone who registered and took advantage of the system in order to get or acquire a claim. One hundred and five thousand people, in round numbers, went to South Dakota and registered in order to have a chance to get a claim in this Rosebud country, and notwithstanding that great number of people, there never has been, so the Commissioner states, one complaint from any person, and not a contest by reason of more than one person claiming the same tract of land.

Mr. MARTIN. Mr. Chairman, I would ask my colleague to state that out of this hundred and five thousand applicants for the privilege of filing upon the lands how many entries, in fact, could have been made and were made?

Mr. BURKE of South Dakota. About twenty-five hundred in round numbers could have been made, but of those that registered not to exceed about twelve or thirteen hundred made entries.

Mr. MARTIN. So that the number of those people who could, in fact, obtain a piece of this land under homestead filing was very small.

Mr. BURKE of South Dakota. Yes; very small. Under the system that prevailed before the lottery system was adopted there could not have helped being serious bloodshed and loss of life, and there would have been litigation that would have

lasted for the next twenty years between parties in contest claiming the same tract of land. But under this lottery system there has not been any complaint, but general satisfaction expressed and no contest whatever. Yet, Mr. Chairman, when you get down in the extreme East there are those who are ready to make a criticism about what is called the Government indulging in running a lottery. It is the most fair, and the only fair manner I can conceive of in disposing of such lands.

Mr. Chairman, I have endeavored to show generally that the Indians of this country are being treated very generously by the Government. I have cited the case of the Rosebuds to show that that is the fact, and that we have dealt with them in what might almost be termed an extravagant manner. I do not think that any person who knows anything about or is familiar with the Indian would say that it was for his best interest to take the money that might possibly belong to him and pay it out to him to spend as he might see fit. There is no parent, who is possesed of means, that would give any considerable amount to his child to squander. On the contrary, he would husband it and spend it for the advancement, education, and development of the child, and if possible when the child has reached his majority and shown traits of character that demonstrate that he is capable of managing property and having charge of money, that then he would pay the money out to him, or give it to him and allow him to spend it as he might see fit.

Why, Mr. Chairman, I have in mind one instance of an Indian on the Pine Ridge Reservation in South Dakota who received several hundred dollars as the result of a claim that he had for a depredation. Having received the money, he spent a considerable part of it — I do not know exactly how much, but several hundred dollars — for a hearse. He had no use whatever for it, but he was attracted by it and thought it would be a nice thing to have, and so he spent his money in purchasing a hearse.

Now, I say, for the good of the Indian, and for his advancement, to say nothing of the law which we have on the subject, these moneys should be placed in the Treasury and reserved and expended only as the best interests of the Indians may seem to require.

Mr. MARTIN. Mr. Chairman, if it will not interrupt the line of thought which my colleague is pursuing, I should like to ask him to make a statement as to whether this plan which the Government has adopted in recent years of encouraging the Indians to work, and in a sense of providing work for them within the reservation, for themselves and their teams, has, in fact encouraged them in habits of industry.

Mr. BURKE of South Dakota. I can answer that question from personal knowledge, and unhesitatingly answer it in the affirmative. While when the system was first proposed the Indians rebelled, to-day they favor it. The Government, as I believe I have already stated, instead of issuing rations and clothing to the Indians, provides work — improving roads in some instances, construction of irrigation ditches, or the hauling of freight — and the Indian receives his pay the same as any other man who labors, and the Indian finds that under this new system he is independent. Under the old system an Indian drew his rations, as a rule, every two weeks. That meant a feast for the first two or three days and starvation until the next ration day, whereas now he has his daily pay, from which he supplies his needs the same as his white brother, and, as I stated in the outset, under the new policy that prevails for the conduct of Indian affairs I do not hesitate to say that I believe the Indian has made more progress in the last ten years than in the previous fifty years, and I believe if this policy is continued, that the solution of the Indian question is, at least, in sight. How long it will take remains to be seen.

I believe that the tribal relations ought to be broken up, that as they become capable of managing their affairs the

individual Indians should be allowed to have a fee simple patent to their lands, and if there are any moneys in the Treasury belonging to the tribe that they should be paid their pro rata share and be let go and in future depend upon their own efforts for their livelihood and their success. Of course I would limit this to such individual Indians as had reached such a stage of advancement as to be capable of managing their own affairs.

Mr. Chairman, the bill under consideration contains a provision authorizing the Commissioner of Indian Affairs to investigate and report to Congress upon the desirability of establishing a sanitarium for the treatment of Indians afflicted with tuberculosis. He is also to report, as far as possible, the extent of the prevalence of tuberculosis among Indians. That subject was referred to by the chairman yesterday, and there was some inquiry concerning it.

I wish to say that this is indeed a very serious proposition. In the beginning of this session I introduced a bill to establish an Indian sanitarium on the Missouri River at or near the city of Pierre, or Fort Pierre, in South Dakota, for the purpose of providing a place where Indians suffering from tuberculosis might be taken and cared for and nursed and, if possible, brought back to health.

Mr. STEPHENS of Texas. I will ask the gentleman if he does not think that the best means of preventing the increase of tuberculosis among the Indians would be to educate them on the reservations of the West, where the climate and conditions are of a sort to which they are accustomed, instead of bringing them to the East, to such places as Carlisle and Hampton, having different climates and different conditions.

Mr. BURKE of South Dakota. Mr. Chairman, I want to say that I am in favor of all the different systems of education which we have for the Indians, the reservation school, the agency school, the nonreservation school, and, if you please, the schools mentioned by the gentleman. While

perhaps as an original proposition I would not be in favor of sending the Indian to a remote part of the country for his education, I do believe that the institutions the gentleman has referred to are doing and have done a great work for the development and civilization and education of the Indians of this country; and while it is true that many Indians who go away to eastern schools return to their homes affected with tuberculosis, and perhaps live but a short time, I doubt very much if statistics will show that the proportion of Indians who become affected with tuberculosis while attending school — and I do not care where the schools are located — is as great as among the Indians upon the reservations and that have never been away to school.

I am going to briefly show the condition of the Indians in South Dakota as to tuberculosis. South Dakota is known and recognized as a State where among the whites tuberculosis is not at all prevalent. It is rarely that a case of tuberculosis develops in South Dakota, while we have many people coming into the State afflicted with the disease who recover and live for many years as though they never had been affected. Consequently it can not be said that if tuberculosis is prevalent among the Indians that it is due to any climatic conditions. The bill which I have referred to was sent to the Interior Department, and a report was made thereon by the Commissioner, which was approved by the Secretary, and I am going to refer very briefly to that report. I will quote from the Commissioner's letter as follows:

> The prevalence of tuberculosis among the Indians is a matter of grave concern. While investigations made by this Office reveal an alarming situation, it is probably only in particular localities where the scourge is worse among the Indians than among whites under similar conditions. A campaign of education has begun among our own people, and if it is necessary for them it is at least as important for our Indians. In their own camps and cabins they do not have the sanitary con-

veniences of a modern civilized home, and one consumptive may become, through ignorance, a source of infection to numberless other persons.

To show the extent of the prevalence of this disease among the Sioux Indians I will read from this report of the Commissioner a statement made by the agency physician at the Pine Ridge Agency in South Dakota, showing the extent of the disease among the Pine Ridge Indians:

> In a recent report by Dr. Joseph R. Walker, agency physician at Pine Ridge Agency, S. Dak., a number of statistical tables were given, from which it appears that in 1905 the full-blood Indian population of the reservation was 4,875, among whom there were 561 cases of consumption during the year, of which 172 were new cases, 104 recoveries, and 109 deaths. The mixed-blood population was 1,822. Among these there were 54 cases of tuberculosis, of which 22 were new, 13 recoveries, and 6 deaths.
>
> The statistics for ten years, from 1896 to 1906, give 903 deaths from tuerculosis among the Indians and 70 deaths among the mixed bloods.
>
> The long service of Doctor Walker at Pine Ridge and his interest in this subject have enabled him to prepare tables unavailable at other reservations, but I assume that the ratio shown at Pine Ridge approximately would hold at the other Sioux reservations of North and South Dakota.

Out of a population of less than 5,000 nearly 1,000 died of tuberculosis within a period of ten years.

The CHAIRMAN. The time of the gentleman from South Dakota has expired.

Mr. SHERMAN. Mr. Chairman, I yield the gentleman fifteen minutes more.

Mr. BURKE of South Dakota. A prominent physician residing in my home city, Dr. D. W. Robinson, president of the board of health of the State, recently contributed an article on the subject of tuberculosis among the Sioux to the Review of Reviews, and it is published in the March number of that magazine. Doctor Robinson is familiar with the conditions of the Sioux Indians, having resided for many years at Pierre, where I reside, adjacent to the Great Sioux Reservation. He has been for many years the physician at the Pierre Indian school, and he has made a study of this subject. In this article he states that up to about 1878 there was no tuberculosis to any extent among the Sioux Indians; that since their mode of life has been changed, and instead of moving from place to place and living in their tepees, they have been confined in small log huts, as was stated yesterday, without ventilation, without any regard whatever for sanitation, this disease has made progress among these Indians, until to-day, as stated by the Commissioner in the report to which I have referred, it is a matter of grave concern.

He says in that statement:

> It is impossible to reduce the conditions to tables and figures. The experience of several years as health officer and as physician to two Indian schools has convinced me that fully 60 per cent of the younger generation has some form of tubercular infection, and 50 per cent of those of the age of puberty die of some form of the disease.

Then he states that there is a report from the Standing Rock Reservation that 75 per cent of all deaths result from tuberculosis. He also quotes from an Indian living on the Sisseton Reservation, who has lived there for fifty years, that fully 50 per cent of them die with this disease.

Now, to illustrate that it is not necessarily a conclusion that an Indian can only acquire tuberculosis by attending some Indian school, as suggested by the inquiry of the gentleman from Texas [Mr. Stephens], I want to call attention to one instance. Doctor Robinson refers to it in this statement. I happen to know the family, and I can say that

it was not due to the fact that the children were in school that the condition that is disclosed here resulted. He says:

> One of the striking instances in point is the destruction of a family of a noted worthy chief, John Grass. In 1892 a white friend met him and his seven sons at a convocation of the tribe. These sons were stalwart fellows and apparently well.

In 1902, ten years thereafter, the friend again met the aged chieftain, who at once recognized the white man. He said: "You saw my boys; all gone, all died of the disease. I have no child left."

Commenting on that, he said:

> It is peculiarly pathetic and appeals most emphatically to the Government for its amelioration. Most justly do these poor wards deserve some measure of relief. The Indians are not alone interested. The health of the white community is menaced by the plague spot which surrounds the agency.

Mr. Chairman, I have referred to this subject for the purpose of calling to the attention of this House the importance of some action, and some prompt action, being taken to check the disease among the Indians of the country, and to justify the action of the committee in putting in the bill a provision authorizing the Commissioner to investigate the subject and report fully to the next session of Congress.

Mr. Chairman, there is one further question to which I desire to refer before I conclude. That is the provision in the bill for an appropriation to be used in obtaining evidence and in prosecuting parties engaged in the sale of liquor to Indians. The Commissioner urges it very strongly in his report made for the fiscal year ending June 30, 1905. He states:

> During the last year fresh efforts have been made by persons engaged in the liquor traffic to elude the law forbidding the introduction of liquor into the Indian country.

Up to last April whenever a person was convicted of selling liquor to an Indian it was never considered that there was a distinction as between an Indian who had taken his allotment and an Indian commonly known as a "reservation Indian." The Supreme Court, in a case entitled "The matter of Heff," held that where an Indian had taken his allotment under section 6 of the Indian allotment law he is a citizen of the State or Territory within which he resided, and that he is no longer subject to the jurisdiction of the United States. The effect of that decision has been most demoralizing among the Indians. Liquor is now sold to Indians almost as openly as to white men, and because of that fact largely I introduced at the earlier part of this session a bill which provides for an amendment to section 6 of the Indian allotment law, so that hereafter, when lands are allotted to Indians, citizenship is to be withheld until they receive their fee-simple patent. In other words, during the period of time that the Government elects to withhold the title to the land citizenship is also to be withheld and the United States will continue to exercise jurisdiction over such Indian. I speak of this because I expect to ask unanimous consent of this House within a very few days to have that bill passed. In the measure there is a provision giving to the Secretary of the Interior authority, in his discretion, whenever he believes an Indian has reached the stage of advancement and civilization where he is capable of managing his own affairs, to issue to such Indian a fee-simple patent, and with that will go full citizenship.

This bill now before the committee is filled with provisions authorizing the Secretary of the Interior to convey to Indians their allotments and relieve them from the trust features. The committee, in incorporating these provisions in the appropriation bill, followed in every instance the recommendation of the Secretary of the Interior. Our theory is that the Secretary of the Interior and the Indian Department is the Department of the Government that knows what is for the best interests of the Indian; that

knows when he has reached a stage capable of managing his own affairs; and, therefore, when it recommends that an Indian be given a fee simple patent for his allotment we put it in the Indian appropriation bill — and I may say that it is subject to a point of order — and in this respect the progress, advancement, and the best interests of the Indian may be very seriously hampered and interfered with unless we have a law such as I have proposed, and such as has been recommended by the Committee on Indian Affairs. It has the very strong recommendation of the Commissioner and is approved by the Secretary of the Interior. I hope that I may be recognized at some near date to call up the bill for consideration, and I trust that every Member of the House will see the necessity and importance for the enactment of such a measure.

In conclusion, Mr. Chairman — and I have not said as much as I wanted to on the subject — I desire to again say that the policy of the Government has been most generous toward its Indian wards. There has been little occasion in recent years for criticism of the administration of Indian affairs. There is no committee of this House that gives more careful consideration to its particular business than does the Committee on Indian Affairs, under the able administration of the distinguished gentleman who has been the chairman of that committee for so many years. There is no branch of the Indian service that he is not familiar with, and every measure that comes from that committee — not only the appropriation bill, but any other bill that has to do with Indian affairs — has behind it the belief on the part of the chairman and the committee that the bill is an honest measure and one that will promote the interest of the Indians and be for the best welfare. [Applause.]

[#21B]

McLaughlin report to Secretary of Interior dated February 12, 1907.

DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON

February 12, 1907

The Honorable,
The Secretary of the Interior.

Sir:

I have the honor to transmit herewith an agreement dated the 21st ultimo, entered into with the Indians of the Rosebud Agency, South Dakota, for the opening to settlement of all that part of the Rosebud Indian Reservation lying south of Big White River and east of range 25 west, of the sixth principal meridian in South Dakota, except such portions thereof as have been or may hereafter be allotted to Indians entitled thereto, including Indian children belonging on the Rosebud Indian Reservation who are living at the date of the approval of the Act ratifying the agreement and who have not heretofore received an allotment, which agreement was negotiated by me under instructions prepared in the Office of Indian Affairs, dated December 5, 1906, bearing Departmental approval of the same date.

The agreement is along the lines suggested by Indian Office instructions above referred to, and, as may be seen by reference to the ninety-four typewritten pages of council proceedings transmitted herewith, every provision of the agreement was thoroughly explained to the Indians in council and thoroughly understood by each and all of them before signing.

The Indians in the beginning were not disposed to consider the question, nor to entertain any proposition for the opening of the said tract to settlement; but after discussing the matter in all its phases and the Indians having held several councils over it among themselves, they submitted a proposition demanding $6 per acre for all land filed upon within three months after it is opened for settlement; $5 per

acre for all land filed upon after the expiration of three months and within six months after the date of opening; and $4 per acre for all land filed upon after six months and within four years from the date of opening; the latter price to include the school lands, sections 16 and 36, or an equivalent in each township; and that all land remaining unentered after the expiration of four years from the date of opening to be sold at public auction to the highest bidder for cash.

I was unable to bring the Indians to recede from their demand for $6 per acre for all land filed upon within three months from opening, and their concurrence at a less price for the higher class land could not be obtained; but they finally agreed to accept $4.50 per acre for the second class land and $2.50 per acre for all land remaining unentered after the expiration of six months after the same shall have been opened to settlement, which latter price ($2.50 per acre) includes sections 16 and 36, or the equivalent of similar character and value in each township.

The weather was exceedingly cold and disagreeable and the roads in bad condition throughout our negotiations, notwithstanding which the councils were very well attended, a fair representative assemblage of the Indians being present at each council held.

After a full discussion of the different propositions, I prepared the agreement embracing the provisions as agreed upon, which, after being read and explained to the Indians assembled, was accepted and the agreement was immediately signed by 43 Indians of those present. Then, in order to obtain the required number of signatures and make it unnecessary for the Indians to travel long distances from their homes to the Agency for that purpose in the cold weather, I visited the headquarters of the several districts of the reservation where the Indians of the respective districts met me, thus visiting Spring Creek, Cut Meat, Butte Creek, Bad Nation, Big White River, Bull Creek, and Ponca Creek

stations, at which points I explained the provisions of the agreement to the Indians assembled and received the signatures of all concurring in the agreement.

Some opposition was met with the beginning, particularly in the Cut Meat and Black Pipe districts, but it was gradually overcome, and I am of the opinion that had the weather been pleasant so that the Indians could have been reached, that the signatures of nearly every Indian of the reservation would have been obtained, there being practically no opposition after the agreement was reached and fully understood by the Indians, and most of those who were in opposition for a time, signed the agreement before I left the Agency.

There are 1368 male adult Indians over 18 years of age belonging on the Rosebud Reservation, 705 of whom have signed the agreement, being a majority of 42 of the male adults, and there is not much doubt but that it would have been unanimous, or nearly so, if all the interested Indians could have been reached.

In conclusion I desire to state that I regard the agreement reasonable in its provisions, and that the lands in question are worth the prices stipulated for the respective classes; and I also believe that fully seventy-five per cent of the lands to be thus opened will be filed upon within the first three months after the tract is opened to entry, the price of which (the first three months' entry) is $6 per acre. I base this opinion upon the great rush that occurred when the Gregory County portion of the Rosebud Reservation was opened to settlement in 1904. And, from a fair knowledge of the character of the lands opened in Gregory County, also of that in the tract proposed to be opened, I regard the latter to be in every respect equal to that of Gregory County which adjoins it on the east, and believing that a greater amount will be realized for the Indians by the provisions of the enclosed agreement than by any other system, I respectfully recommend its approval and ratification.

I desire to add that quite a number of the Indians before signing the agreement expressed themselves as fully concurring in all its provisions, but wanted it distinctly understood that should the agreement fail of ratification just as it was written, they did not wish their names transferred to appear as concurring in H.R. bill 20527, 59th Congress, 2d session, or any other bill of a similar character, which they imagined was done with their signatures to the unratified agreement of September 14, 1901, when Gregory County lands were opened by the Act of April 23, 1904.

I am, Sir,

Very respectfully,
Your obedient servant,
James McLaughlin
U.S. Indian Inspector

2 enclosures.

[#22E]

Proclamation of August 24, 1908, 35 Stat. 2203

A PROCLAMATION

Whereas by the Act approved March 2, 1907 (34 Stat., 1230), the Congress directed that all that part of the Rosebud Indian Reservation lying south of the Big White river, and est of Range 25 west, of the Sixth Principal Meridian, except allSections 16 and 36, which were granted to the state of South Dakota, and excepting also such parts thereof as have been or shall hereafter be either allotted to Indians, selected by said state, or reserved for townsite purposes, be disposed of under the general provisions of the homestead laws of the United States, and be opened to settlement, entry and occupation only in such manner as the President might prescribe by proclamation;

Now, therefore, I, Theodore Roosevelt, President of the United States, by virtue of the power and authority vested in me by said Act of Congress, do hereby prescribe, proclaim

and make known that all of said lands which shall remain unallotted to Indians, unselected by said state and unreserved for townsites, on the first day of March, A.D. 1909, will be opened to settlement and entry, under the general provisions of the homestead laws, and of said Act of Congress, in the manner herein prescribed as follows, and not otherwise:

1. Any person who is qualified to make a homestead entry may, between 9:00 o'clock a.m., on Monday, October 5, and 4:30 o'clock p.m., on Saturday, October 17, 1908, and not thereafter, present to James W. Witten, Superintendent of the Opening, or to some person acting for him, at either the town of Dallas or the town of Gregory, in Gregory county, South Dakota, either by ordinary mail or otherwise, but not by registered mail, a sealed envelope which bears no distinctive marks indicating the name of the applicant, and which contains his application for registration, hereinafter prescribed.

2. All applications for registration must be made on forms prescribed and furnished by the General Land Office, and must show that the applicant is qualified to make homestead entry, and state his age, height, weight and postoffice address; and be sworn to at one of the following named towns, Chamberlain, Dallas, Gregory or Presho, in the state of South Dakota, or O'Neill or Valentine, in the state of Nebraska, before a United States Commissioner, Judge or Clerk of a Court of Record, or a Notary Public, authorized under the laws of said states to administer oaths in said towns.

3. Any person filing more than one affidavit, or in any other than his true name, shall be denied the privilege he might have otherwise secured, under this drawing, except, that any honorably discharged soldier or sailor entitled to the benefits of Section 2304 of the Revised Statutes of the United States, as amended by the Act of March 1, 1901 (31 Stat., 847), may be represented by an agent of his own selec-

tion, for the purpose of executing and presenting his application for registration, due authority therefor being shown, but no person shall be permitted to act as agent for more than one such soldier or sailor, and the agents of all soldiers and sailors must execute the affidavits required of them at one of the towns named above, and present the same in the same manner in which persons who are not soldiers are required to present their applications.

Envelopes showing, on the outside, distinctive marks of any character, indicating the name of the person whose application is inclosed therein, shall be eliminated from the drawing.

4. Beginning at 10:00 a.m., on October 19, 1908, and continuing thereafter as long as may be necessary, there shall be impartially taken and drawn from the whole number of envelopes so presented, such number of them as may be necessary to carry into effect the provisions of this Proclamation; and the applications for registration contained in the envelopes so drawn shall, when they are correct in form and execution, be numbered serially in the order in which they are drawn, and the number thus assigned shall fix and control the order in which applications to enter may be presented, after the lands shall become subject to entry.

5. Immediately after the drawing, a list of the successful applicants, showing the number assigned to each of them, will be conspicuously posted at the place of registration, and furnished to the press for publication as a matter of news, and a notice will be promptly mailed to each person whose name is drawn and numbered, informing him of the number assigned to him, and of the date on which he must apply to enter, and later he will, in due time, be furnished with a copy of the regulations controlling the method of entry, and be supplied with a map showing the lands subject to entry. The notice will be mailed to the postoffice address given by the applicant in his application for registration, except in cases where the applicant requests otherwise, and any applicant who changes his postoffice address before November 1, 1908, should, at once, inform the Superintendent of the Opening of the change.

6. Commencing at 9:00 a.m., on March 1, 1909, and continuing thereafter on such dates as may be fixed by the Secretary of the Interior, persons holding numbers assigned to them under this Proclamation will be permitted to present their applications to enter tor their declaratory statements, in cases where the applicant is entitled to make entry as a former-soldier), in the order in which their applications for registration were drawn and numbered.

7. If any person fails to apply to enter or to file a declaratory statement, if he is entitled to do so, as a former soldier, on the day assigned to him for that purpose, or, if he presents more than one application for registration, or presents an application in any other than his true name, he will forfeit his right to enter any of said lands prior to September 1, 1909.

8. None of these lands shall become subject to settlement or entry prior to September 1, 1909, except in the manner prescribed herein, and all persons are admonished not to make any settlement prior to that date, on any lands not covered by entries made by them under this Proclamation.

9. The Secretary of the Interior shall make and publish such rules and regulations as may be necessary and proper to carry into full force and effect the manner of settlement, occupation and entry, as herein provided for, and he shall, prior to the first day of March, reserve from said land such tracts for townsite purposes as, in his opinion, may be required for the future pubic interests.

In witness whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington this 24th day of August in the year of our Lord one thousand nine hundred

[SEAL.] and eight, and of the Independence of the United States the one hundred and thirty-third.

Theodore Roosevelt

By the President:
Alvey A. Adee
Acting Secretary of State.

[#34B]

McLaughlin report to Secretary of Interior dated April 29, 1909.

DEPARTMENT OF THE INTERIOR
UNITED STATES INDIAN SERVICE

Rosebud Agency, South Dakota
April 29, 1909.

Subject:
Opening part of
Rosebud Reservation

The Honorable
The Secretary of the Interior,
Washington, D. C.

Sir:

I have the honor to report the result of conferences held by me with the Rosebud Indians, South Dakota, with reference to the opening a part of their reservation to settlement, as contemplated by Senate Bill 7379, — Sixtieth Congress, Second Session, which conferences were conducted under Departmental instructions of December 21, 1908, and 2nd instant, respectively.

While here last month, supervising the payment to certain Sisseton and Wahpeton beneficiaries, about sixty of the leading Indians of the reservation met me at the agency by request on the 11th ultimo, to whom I explained the provisions of the Senate bill above referred to, for the purpose of preparing their minds for the more formal council which Department letter of December 21, 1908, directed me to later hold with them in connection with the provisions of said bill, and I transmit herewith (Exhibit "A") a transcript of the stenographic notes of the Indian speeches taken by M. A. Buffalo, stenographer, on that occasion, all of which speeches, as may be seen by the minutes, were in opposition to the proposed opening.

Upon returning here on the 14th instant, I had the Indians of the reservation notified to meet me in council at the agency on the 21st, but the weather being unfavorable, and roads in bad condition, only about 100 Indians were present at our first formal council, and at the request of the assembled Indians, an adjournment was taken until the 26th instant, on which latter date about 250 of the leading male adults of the reservation were present.

The minutes of our conference transmitted herewith (Exhibit B) show that I explained the said Senate bill to the Indians very clearly and that all of them fully understand its provisions, also that, with the exception of a few of the older men, the opening of that part of the reservation lying north of the 10th Standard Parallel is concurred in by the interested Indians, but none of them favor the opening of the two tiers of townships in the eastern part of Meyer County.

The strip of two townships in width in the eastern part of Meyer County included in the bill, extends from the line between the States of Nebraska and South Dakota to the 10th Standard Parallel of latitude north, and embraces ten full townships and two half townships, containing at the present time, as stated to me by Special Allotting Agent, J. H. Scriven, 135,520 acres of unallotted and unreserved land, exclusive of the school sections, leaving surplus lands in this strip equivalent to 847 homesteads of 160 acres each.

Mr. Scriven also stated that the lands remaining unallotted and unclaimed in the 45 townships and fractional townships of the Rosebud Reservation, embraced in the

strip lying north of the 10th Standard Parallel of latitude, exclusive of the school sections, leaves a surplus of 295,680 acres, being equivalent to 1848 homesteads of 160 acres each, but that much of this surplus land will be rough and undesirable tracts.

A great many Indians of the reservation have called upon me during my present visit here, and I discussed the contemplated opening with all of those thus calling, and since our first formal council of the 21st instant, at which I explained the proposed legislation to those assembled, the sentiment in favor of opening the strip lying north of the 10th Standard Parallel of latitude has steadily increased until concurrence in the opening of said strip is now practically unanimous, the nonconcurring element being a few of the older men, as voiced by speakers, High Pipe, Turning Bear and Dog Trail, as set forth on pages 17 and 18 of the council minutes, and opposition to the opening of the northern strip is not very strenuous, as evidenced by the fact that during the past two days several of the older Indians of the reservation have called upon me to express their concurrence in the opening of the northern strip, provided the two tiers of townships in the eastern part of Meyer County remain a part of the diminished reservation.

The Indians, in council and out of council, protested against the grazing of cattle on this reservation, either under acreage lease or by the permit system, their contention being that these range cattle destroy their cultivated fields and meadow lands, thus making it impossible for them to raise any crops or increase their own herds, and that the small revenue derived from such grazing permits, about $5.00 per capita, is insignificant, when the loss occasioned the Indians thereby is taken into consideration.

Replying to this contention of the Rosebud Indians, I advised them that the question of grazing on this reservation was foreign to the object of my visit to their agency, and that it was a matter to be determined by their Agent and the In-

dian Office, but they insisted upon my mentioning it in my report, which I finally promised to do, hence my referring to it here.

In conclusion I desire to state that a large majority of the Indians of the Rosebud reservation, and more particularly nearly all of the younger men, being favorable to the opening to settlement, under the provisions of Senate bill 7379, — 60th Congress, 2nd Session, of that part of their reservation lying north of the 10th Standard Parallel of latitude, and as all allotments to be made therein can doubtless be completed this year, there appears to me no good reason why this northern strip should not be opened as proposed in the said bill.

As to the opening of the two tiers of townships in the eastern part of Meyer County, proposed by the said bill, I have no doubt but that the Indians would gracefully accept any action of Congress in the premises, but with the commendable manner in which they have assented to the opening of that part of their reservation lying north of the 10th Standard Parallel, and their present unwillingness to concur in the opening of the two tiers of townships in the eastern part of Meyer County, I believe that it would be advisable to defer the opening of the said two tiers of townships for the time being.

Very respectfully,
Your obedient servant,
James McLaughlin
U.S. Indian Inspector.

2 incl.

[#35E]

Proclamation of June 29, 1911, 37 Stat. 1691.

A PROCLAMATION

I, WILLIAM H. TAFT, President of the United States of America, by virtue of the power and authority vested in me

by the Acts of Congress approved May 27, 1910 (36 Stat., 440), and May 30, 1910 (36 Stat., 448), do hereby prescribe, proclaim and make known that all the non-mineral, unallotted, unreserved lands within the Pine Ridge and Rosebud Reservations in the State of South Dakota, which have been classified under said Acts of Congress into agricultural land of the first class, agricultural land of the second class, and grazing land shall be disposed of under the general provisions of the homestead laws of the United States and of said Acts of Congress, and be opened to settlement and entry, and be settled upon, occupied and entered in the following manner, and not otherwise:

1. All persons qualified to make a homestead entry may, on and after October 2, 1911, and prior to and including October 21, 1911, but not thereafter, present to James W. Witten, Superintendent of the Opening, at the City of Gregory, South Dakota, by ordinary mail, but not in person or by registered mail or otherwise, sealed envelopes containing their applications for registration, but no envelope must contain more than one application; and no person can present more than one application in his own behalf and one as agent for a soldier, sailor, or for the widow or minor orphan child of a soldier or sailor, as hereinafter provided.

2. Each application for registration must show the applicant's name, postoffice address, age, height and weight, and be sworn to by him at either Chamberlain, Dallas, Gregory or Rapid City, South Dakota, before some Notary Public designated by the Superintendent.

3. Persons who were honorably discharged after ninety days' service in the Army, Navy or Marine Corps of the United States, during the War of the Rebellion, the Spanish-American War, or the Philippine Insurrection, or their widows or minor orphan children, may make their applications for registration either in person or through their duly appointed agents, but no person can act as agent for more than one such applicant, and all applications

presented by agents must be signed and sworn to by them at one of the places named and in the same manner in which other applicants are required to swear to and present their applications.

4. Beginning at ten o'clock a.m. on October 24, 1911, at the said City of Gregory, and continuing thereafter from day to day, Sundays excepted, as long as may be necessary, there shall be impartially taken and selected indiscriminately from the whole number of envelopes so presented, such number thereof as may be necessary to carry into effect the provisions of this Proclamation, and the applications for registration contained in the envelopes so selected shall, when correct in form and execution, be numbered serially in the order in which they are selected, beginning with number one, and the numbers thus assigned shall fix and control the order in which the persons named therein may make entry after the lands shall become subject to entry.

5. A list of the successful applicants, showing the number assigned to each of them, will be conspicuously posted and furnished to the press for publication as a matter of news, and a proper notice will be promptly mailed to each person to whom a number is assigned.

6. Beginning at nine o'clock a.m. on April 1, 1912 and continuing thereafter on such dates as may be fixed by the Secretary of the Interior, persons holding numbers assigned to them under this proclamation will be permitted to designate and enter the tracts they desire as follows:

When a persons name is called, he must at once select the tract he desires to enter and will be allowed fifteen days following date of selection to complete entry at the proper local land office. During that period of fifteen days, he must file his homestead application at the proper local land office, accompanying the same with the usual filing fees and commissions and in addition thereto, one-fifth of the appraised value of the tract selected. To save expense incident

to an additional trip to the land and to return to the local land office, he may, following his selection, execute his homestead application for the tract selected within the proper land district and file same in the proper local land office, where it will be held awaiting the payment of the fees and commissions and one-fifth of the appraised value of the land. In that event, the payment must be made within the fifteen days following date of selection. Payments can be made *only* in cash or by postoffice money orders made payable to the receiver of the proper local land office. These payments may be made in person, through the mails or any other means of agency desired, but the applicant assumes all responsibility in the matter. He must see that the payments reach the local office within the fifteen days allowed, and where failure occurs in any instance where the application has been filed in the local office without payment, as herein provided for, the application will stand rejected without further action on the part of the local officers.

In the case of declaratory statements, allowable under this opening, the same course may be pursued, except that the filing fees must be paid within the fifteen days following date of selection, the party having six months after filing within which to complete entry. Soldiers or sailors or their widows or minor orphan children, making homestead entry of these lands must make payments of fees and commissions and purchase money as is required of other entrymen. All persons making homestead entry of these lands must pay the remaining four-fifths of the purchase money in five equal installments. These payments will become due at the end of two, three, four, five and six years after the date of entry, unless the entry is commuted. If commutation proof is made, all the unpaid installments must be paid at that time. If any entryman fails to make any payment when it becomes due, all his former payments will be forfeited and his entry will be canceled.

No person can select more than one tract or present more than one application to enter or file more than one declaratory statement in his own behalf.

7. If any person fails to designate the tract he desires to enter on the date assigned to him for that purpose, or if, having made such designation, he fails to perfect it by making entry or filing and payments as above provided, or if he presents more than one application for registration, or presents an application in any other than his true name, he will forfeit his right to make entry or filing under this proclamation.

8. None of these lands opened to entry under this proclamation shall become subject to settlement prior to that hour on lands not covered by entries or filings made by them under this proclamation. At nine o'clock a.m. on October 1, 1912, all of said lands which have not then been entered under this proclamation will become subject to settlement and entry under the general provisions of the homestead laws and the said Acts of Congress.

9. The Secretary of the Interior shall make and prescribe such rules and regulations as may be necessary and proper to carry this proclamation and the said Acts of Congress into full force and effect.

In Witness Whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 29th day of June in the year of our Lord one thousand nine hundred
[SEAL] and eleven, and of the Independence of the United States the one hundred and thirty-fifth.

Wm. H. Taft

By the President:

P. C. Knox

Secretary of State.

[#42A]

Instructions to Inspector McLaughlin dated May 22, 1911.

Inspector James McLaughlin,
Washington, D. C.

Sir:

There are enclosed herewith copies of Senate Bills 110, 111, 1624, 1127, and 874, authorizing the sale and disposition of the surplus and unallotted lands in Todd and Bennett counties, Rosebud Reservation; in Washabaugh county, Pine Ridge Reservation; in the Crow Creek Indian Reservation, and the Lower Brule Indian Reservation, and the allotment to certain members of the Ponca Tribe of Indians from the surplus or unallotted lands within the Rosebud Indian Reservation, South Dakota, respectively.

As soon as your other assignments will permit, it is desired that you take up the provisions of said bills with the members of the interested tribes for the purpose of ascertaining their views with regard thereto. Detailed instructions appear unnecessary in view of your several similar assignments in the past.

Please submit your reports in ample time to permit a full consideration of the subject-matter of the proposed legislation prior to the convening of the Congress at its regular session in December next.

Very respectfully,
Acting Secretary

Enclosures.

[#42B]

McLaughlin report to Secretary of Interior dated November 3, 1911.

DEPARTMENT-OF THE INTERIOR
UNITED STATES INDIAN SERVICE

Rosebud Agency, South Dakota,
November 3, 1911.

The Honorable,
The Secretary of the Interior,
Washington, D. C.

Sir:

Under Departmental instructions of May 22nd last I have the honor to report result of council held by me with the Indians of the Rosebud Agency, South Dakota, with reference to the sale and disposition of the surplus lands of their reservation, as provided in Senate Bill 110, 62nd Congress, 1st Session, which Bill embraces all of the surplus and unallotted lands of the Rosebud Reservation, exclusive of certain tracts, aggregating 40,302.21 acres, reserved for agency, Board School, Day Schools, Issue Stations, Timber reserve and religious institutions, also sections sixteen and thirty-six in each township of the area embraced in the Bill, aggregating 50,880 acres, granted to the State of South Dakota.

My council with the Rosebud Indians with reference to this proposed opening of the remainder of their surplus lands was held at the Rosebud Agency on the 1st inst., with 85 of the leading Indians of the reservation present. Owing to the inclemency of the weather and the long distance that some of the Indians had to travel to reach the Agency from their homes, the council was not so largely attended as it doubtless would, had the weather been more favorable, but the assemblage was a good representative gathering of the leading men of the reservation, and, being well acquainted with the Rosebud Indians, know that those attending the council represented the sentiment of the Indians of the reservation in all tribal matters, and that the conclusion

voiced by them would be concurred in by the Indians of the reservation.

As may be seen by the minutes of council, transmitted herewith, Exhibit A, I explained to the assembled Indians the said Senate Bill very clearly and know that they fully understood its several provisions, and the recorded speeches of the respective spokesmen, who had been designated by the tribe to discuss the matter in our council, show that a strong sentiment of opposition to the opening of the remainder of their surplus lands prevails among the Indians of the Rosebud Reservation.

The Indians appealed very feelingly for the retention of the remaining small acreage of their surplus land for allotments to children born to them, and it is believed that all of the agricultural lands of the diminished Rosebud reservation would thus be exhausted in the next two years.

The diminished reservation of the Rosebud Indians is now embraced in Todd County, South Dakota, the boundary line between the Rosebud and Pine Ridge reservations, having been made the western boundary of Todd County, by Act of the South Dakota legislature, approved March 2, 1911, and the said boundary line between the Rosebud and Pine Ridge reservations having also been made the eastern boundary of Bennett County, therefore there is no portion of Bennett county, as now defined, within the Rosebud reservation.

From figures furnished me by Special Allotting Agent John H. Scriven, the county of Todd, which now embraces all of the unopened lands of the Rosebud Indian Reservation, contains 889,403.52 acres, of which 636,300.61 acres have been allotted to Indians in addition to which the following reservations have been made, viz:

Reserve for Agency	16,073.22 acres
Reserve for Boarding School	6,604.22 acres
Reserve for Day Schools	1,116.35 acres
Reserve for Issue Stations	320.00 acres

Reserve for Churches and cemeteries	1,569.31 acres
Timber Reserve	14,619.71 acres
Total reserved	40,302.81 acres
State School lands within Todd County	50,880.00 acres
	91,182.81 acres

This 91,182.81 acres of reserved land added to the 636,-300.61 acres allotted to Indians aggregating 727,483.42 acres, when taken from the 889,403.52 acres contained in Todd County, leaves 161,920.10 acres of surplus and unallotted lands within the diminished Rosebud Reservation, but Mr. Scriven, Special Allotting Agent, who has been engaged in allotment work on this reservation for the past four years, and familiar with the character of the land on the entire reservation, stated to me that there are not to exceed 50,000 acres of good land remaining unallotted within the Rosebud Indian reservation; that, at the least, 100,000 acres of the 161,920.10 acres of remaining surplus lands of the reservation are of inferior quality, the greater portion being sand hills and barren buttes of but little value.

In the past eight years the Rosebud Indians have consented to the opening of fully three-fourths of their original reservation, that is, Gregory County in 1904, Tripp County in 1909, and Mellette County, recently appraised and registered for, and open to entry April 1st next. With the diminished reservation of the Rosebud Indians being now only about one fourth of its area of eight years ago, it would appear that the opening of the remainder of their surplus lands, which are said to be very inferior in quality, might better be deferred for the present, and until the Mellette County lands, which are said to be very inferior in quality, might better be deferred for the present, and until the Mellette County lands, now being opened have been filed upon, and more especially until after the surplus lands in

Washabaugh County, in the Pine Ridge reservation have been opened, the Pine Ridge Indians having at the present time three-fourths of their original reservation intact, while the Rosebud Indians, whose reservation adjoins the Pine Ridge reservation on the east, have had their reservation diminished in the past eight years to one-fourth of its original area.

The Rosebud Indians are well disposed and will, I am confident, acquiesce in the opening of their surplus lands under the provisions of the said Senate Bill, which if enacted into law may, on the whole, be for their best interests, but they having so commendably consented to each of the three cessions of their reservation lands in the past eight years, if this proposed opening were deferred for a year or two it would be very gratifying to them and the public interest would not be seriously affected thereby.

In connection with the proposed opening under the provisions of the said Senate Bill, I desire to invite your attention to certain erroneous wording in the first Section, lines 6 and 7, page 1 of the Bill which reads: "lying and being within the counties of Todd and Bennett", and as hereinbefore stated there is no portion of Bennet County now within the Rosebud reservation, the said clause should therefore be made to read: "lying and being within the county of Todd."

Furthermore, the provision in the first Section of said bill, lines 10 to 14, page 2, is superfluous, which reads: "That any Indians to whom allotments have been made on the tract to be ceded may, in case they elect to do so before said lands are offered for sale, relinquish same and select allotments in lien thereof on the diminished reservation."

The said Senate Bill provides for the opening of all the surplus lands of the Rosebud Reservation and should the bill become a law there would be no *diminished Rosebud*

reservation. Therefore, the above quoted provision is unnecessary and should be eliminated.

Very respectfully,
Your obedient Servant,
James McLaughlin
Inspector

(Signed)
JMcL-(P)
1 enclosure

[#42C]

Letter from Secretary of Interior to Senator Gamble, 1911.

Hon. Robert J. Gamble,
Chairman, Committee on Indian Affairs,
United States Senate.

Sir:

I have the honor to refer to Departmental letter of May 19, 1911, regarding Senate Bill, No. 110, 62nd Congress, First Session, providing for opening all surplus lands within the diminished Rosebud Reservation, South Dakota.

Inspector James McLaughlin met representatives of the Rosebud Indians on November 1, 1911, for the purpose of discussion with them the pending bill. He found the Indians decidedly opposed to the bill, principally because by successive openings within the past few years their reservation has been reduced to less than one-fourth of its original area. Gregory County was opened in 1904, under the Act of April 23, 1904 (33 Stats. L., 254); Tripp County in 1909, under the Act of March 2, 1907 (34 Stats. L., 1230), and Mellette County will be opened in 1912, under the Act of May 30, 1910 (36 Stats. L., 448); the President's proclamation therefor having been issued June 29, 1911. This leaves within the diminished reservation at this time the lands in Todd County only, which, from the Inspector's report (copy enclosed), contains only 889,403 acres, of which 636,300

acres have heretofore been allotted and 40,302 acres reserved for school, agency, missionary and tribal purposes.

This would leave 212,801 acres unallotted and unreserved, of which, it is established, 50,880 acres would pass to the State of South Dakota as "school lands" should the bill become a law. There would remain, therefore, approximately 161,921 acres to be disposed of to homestead settlers.

The Special Allotting Agent who has been working within this reservation for a number of years, and, therefore, familiar with local conditions, advises the Inspector that not to exceed 50,000 acres of good land and remain undisposed of within this reservation, and that the greater part of the surplus lands consists of sand hills and barren buttes of but little value.

In view of the successive reductions made in this reservation during the past few years, the fact that the Indians are decidedly opposed to opening the diminished reservation at this time and that there will be but little desirable land to place on the market, should the bill become a law, I have the honor to recommend that no further action be had on the bill at this session of the Congress. To accede to the wishes of the Indians at this time would but promote a more kindly spirit among them and greatly facilitate administrative action of their affairs.

Respectfully, Secretary

12-VAR-1

[#48A]

Petition of Rosebud Sioux Indians to the Commissioner of Indian Affairs dated February 18, 1914.

Capitital Hotel, Washington, D. C.
February 18, 1914.

Honorable Cato Sells,
Commissioner, Indian Affairs.

Our Friend:

The undersigned are members of a delegation selected by the Rosebud band of Sioux Indians, belonging to their reservation in South Dakota, to present matters to you which are of deep interest to their welfare.

1. Section 17, of the agreement with the Sioux tribe, approved by Congressional action March 2, 1889, stipulates as follows: "Provided, That each head of a family or single person over the age of 18 years, who shall have or may hereafter take his or her allotment of land in severalty, shall be provided with", etc. This has reference to the giving of allotment benefits to the parties designated in the portion of the Section quoted above, and related solely to the act of taking their allotments. In many instances allotments have been taken by parties who would be entitled to these benefits but owing to the pressure of business in the Indian Department of the Government the selections of allotments were not approved for several years and the allottees, or some of them, have died during the period the schedule for allotment was pending, and their heirs were not given the benefits above noted, as contemplated by Section 17, the Indian Department holding that the meaning of "taking allotments," is to have the allotments *approved* before any right exists to secure the benefits provided for in that Section of the law.

2. We are opposed to the opening to settlement of Todd County, within our Reservation, by outsiders. We are poor, our lands are suitable, primarily, for grazing, and especially is this the case with the surplus lands in Todd County which the politicians are seeking to have thrown open to outside settlement. There may be remaining about one hundred and fifty quarter sections of land which are not allotted to our tribe; we want this land allotted to our children who have no allotments; we need the land for grazing, and it is chiefly fit only for grazing purposes. If the land in Todd County was

sold we would realize a very small sum from it; it will be of far more benefit to us to use it for grazing our stock upon.

3. We have been confronted with what appears to us a great wrong from the fact that under the law a white man who marries into our tribe becomes heir to the lands allotted to members of our tribe upon their death, under the laws, as we now understand, of the State of South Dakota. We want the land of deceased allottes to go to the Indian parent and to brothers and sisters of deceased allottees.

4. We desire our rights under what is known as the "Black Hills" treaty, fully determined, so that we may know what action we should take to protect our rights thereunder, if it is thought best to appeal to the Courts for those rights to which we believe we are entitled to. Therefore we ask that you may give us a statement of what the Government will do for us under the Black Hills Treaty or agreement.

5. We desire that the proceeds derived from the sale of lands in Mellette County, formerly a part of our reservation, shall be paid to each Indian member of our tribe according to his or her choice, whether in cash, in live stock or farming implements, the selection to be made by the head of the family, the same manner as the head of a family is now entitled to draw the per capita payments of the children.

6. We desire that all members of our tribe who have reached sixty years of age, and the infirm, may be given the full ration according to treaty and agreement with the Government.

7. We desire that the "allotment benefits" shall be given the married women, members of our tribe, as provided by Article five (5), of the Lower Brule (Sioux) agreement of 1898.

8. We desire that an Indian Court may be established to

control the affairs of our tribe which it may be proper to refer to such a court for settlement.

9. We desire that you may secure authority of law to provide a pension for Indian Police who are rendered unfit to support themselves either by long service for the Government or by accident in the line of duty.

10. We desire to be fully informed regarding the right of the State of South Dakota to tax our real or personal property, and what kind of property which we own is subject under the laws to taxation.

11. Our tribe has already petitioned through our Superintendent for a per capital payment of $30, from the proceeds of the lands of Tripp County which has been sold. This, we hope, will not be long delayed since we need the funds to buy seeds for this season, now near at hand, planting time being but a few weeks away.

12. We desire to be informed whether or not the provision of the Treaty, made with our tribe April 29, 1868, which, in Article 19, stipulates that no portion of our land shall be sold unless three-fourths of the male adult Indians shall first agree to the same, is still in force, and whether the Government is now bound by that prosition of treaty? We are bound by our promises, and we think that the Government should fulfill its promises.

On behalf of the Rosebud band of Sioux Indians, Rosebud Agency, S. D., by the Delegates of said tribe.

Clement W. Soldier
Wm. Thunder Hawk
Henry Horse Soo King
Capt. Eugene Little
Silas Standing Elk
Henry Hollow Horn Bear
High Pipe (his mark)
Brave Bind (his mark)

Reuben Quick Bear,
Chairman

Attest:
Charles C. Jackett, Interpreter.

[#57]

Proclamation of April 11, 1892, 27 Stat. 1017.

A PROCLAMATION

Whereas, by the third article of the treaty between the United States of America and the Sisseton and Wahpeton bands of Dakota or Sioux Indians, concluded February 19, 1867, proclaimed May 2, 1867 (15 U.S. Statutes, p. 505), the United States set apart and reserved for certain of said Indians certain lands, particularly described, being situated partly in North Dakota and partly in South Dakota, and known as the Lake Traverse Reservation; and

Whereas, by agreement made with said Indians residing on said reservation, dated December 12, 1889, they conveyed, as set forth in article one thereof, to the United States, all their title and interest in and to all the unallotted lands within the limits of the reservation set apart as aforesaid remaining after the allotments shall have been made, which are provided for in article four of the agreement, as follows: "that there shall be allotted to each individual member of the bands of Indians, parties hereto, a sufficient quantity, which, with the lands heretofore allotted, shall make in each case one hundred and sixty acres, and in case no allotment has been made to any individual member of said bands, then an allotment of one hundred and sixty acres shall be made to such individual"; and

Whereas, it is provided in article two of said agreement, "That the cession, sale, relinquishment, and conveyance of the lands described in article one of this agreement shall not

take effect and be in force until the sum of $342,778.37, together with the sum of $18,400, shall have been paid to said bands of Indians, as set forth and stipulated in article third of this agreement"; and

Whereas, it is provided in the act of Congress approved March 3, 1891 (26 U.S. Statutes, pp. 1036-1038, Sec. 30), accepting and ratifying the agreement with said Indians:

"That the lands by said agreement ceded, sold, relinquished, and conveyed to the United States shall immediately, upon the payment to the parties entitled thereto of their share of the funds made immediately available by this act, and upon the completion of the allotments as provided for in said agreement, be subject only to entry and settlement under the homestead and townsite laws of the United States, excepting the sixteenth and thirty-sixth sections of said lands, which shall be reserved for common school purposes, and be subject to the laws of the State wherein located: *Provided*, That patents shall not issue until the settler or entryman shall have paid to the United States the sum of two dollars and fifty cents per acre for the land taken up by such homesteader, and the title to the lands so entered shall remain in the United States until said money is duly paid by such entryman or his legal representatives, or his widow, who shall have the right to pay the money and complete the entry of her deceased husband in her own name, and shall receive a patent for the same," and

Whereas, Payment as required by said act, has been made by the United States; and

Whereas, Allotments as provided for in said agreement, as now appears by the records of the Department of the Interior will have been made, approved, and completed, and all other terms and considerations required will have been complied with on the day and hour hereinafter fixed for opening said lands to settlement.

Now, therefore, I, Benjamin Harrison, President of the United States, do hereby declare and make known that all

of the land embraced in said reservation, saving and excepting the lands reserved for and allotted to said Indians, and the lands reserved for other purposes in pursuance of the provisions of said agreement and the said act of Congress ratifying the same and other, the laws relating thereto will, at and after the hour of twelve o'clock noon (central standard time) on the fifteenth day of April, A.D. eighteen hundred and ninety-two, and not before, be opened to settlement under the terms of and subject to all the terms and conditions, limitations, reservations, and restrictions contained in said agreements, the statutes above specified, and the laws of the United States applicable thereto.

The lands to be opened for settlement are for greater convenience particularly described in the accompanying schedule, entitled "Schedule of lands within the Lake Traverse Reservation opened to settlement by proclamation of the President dated April 11, 1892," and which schedule is made a part hereof.

Warning, moreover, is hereby given that until said lands are opened to settlement as herein provided, all persons, save said Indians, are forbidden to enter upon and occupy the same or any part thereof.

And further notice is hereby given that it has been duly ordered that the lands mentioned and included in this Proclamation shall be, and the same are attached to the Fargo and Watertown land districts, in said States, as follows:

1. All that portion of the Lake Traverse Reservation, commencing at the northwest corner of said reservation; thence south 12 degrees 2 minutes west, following the west boundary of the reservation to the new seventh standard parallel, or boundary line between the States of North and South Dakota; thence east, following the new seventh standard parallel to its intersection with the north boundary of said Indian reservation; thence northwesterly with said boundary to the place of beginning, is attached to the Fargo

land district, the office of which is now located at Fargo, North Dakota.

2. All that portion of the Lake Traverse Reservation, commencing at a point where the new seventh standard parallel intersects the west boundary of said reservation; thence southerly along the west boundary of said reservation to its extreme southern limit; thence northerly along the east boundary of said reservation to Lake Traverse; thence north with said lake to the northeast corner of the Lake Traverse Indian Reservation; thence westerly with the north boundary of said reservation to its intersection with the new seventh standard parallel, or boundary line between the States of North and South Dakota; thence with the new seventh standard parallel to the place of beginning, is attached to the Watertown land district, the office of which is now located at Watertown, South Dakota.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this eleventh day of April, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and sixteenth.

[SEAL]

Benj. Harrison

By the President:
James G. Blaine
Secretary of State.

[#58]

Act of March 2, 1889, 25 Stat. 888

Chap. 405. — An act to divide a portion of the reservation of the Sioux Nation of Indians in Dakota into separate reservations and to secure the relinquishment of the Indian title to the remainder, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following tract of land, being a part of the Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Pine Ridge Agency, in the Territory of Dakota, namely: Beginning at the intersection of the one hundred and third meridian of longitude with the northern boundry of the State of Nebraska; thence north along said meridian to the South Fork of Cheyenne River, and down said stream to the mouth of Battle Creek; thence due east to White River; thence down White River to the mouth of Black Pipe Creek on White River; thence due south to said north line of the State of Nebraska; thence west on said north line to the place of beginning. Also, the following tract of land situate in the State of Nebraska, namely: Beginning at a point on the boundary-line between the State of Nebraska and the Territory of Dakota where the range line between ranges forty-four and forty-five west of the sixth principal meridian, in the Territory of Dakota, intersects said boundary-line; thence east along said boundary-line five miles; thence due south five miles; thence due west ten miles; thence due north to said boundary-line; thence due east along said boundary-line to the place of beginning: *Provided*, That the said tract of land in the State of Nebraska shall be reserved, by Executive order, only so long as it may be needed for the use and protection of the Indians receiving rations and annuities at the Pine Ridge Agency.

Sec. 2. That the following tract of land, being a part of the said Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Rosebud Agency, in said Territory of Dakota, namely: Commencing in the middle of the main channel of the Missouri River at the intersection of the south line of Brule County; thence down said middle of the main channel of said river to the intersection of the ninety-ninth degree of

west longitude from Greenwich; thence due south to the forty-third parallel of latitude; thence west along said parallel to a point due south from the mouth of Black Pipe Creek; thence due north to the mouth of Black Pike Creek; thence down White River to a point intersecting the west line of Gregory County extended north; thence south on said extended west line of Gregory County to the intersection of the south line of Brule County extended west; thence due east on said south line of Brule County extended to the point of beginning in the Missouri River, including entirely within said reservation all islands, if any, in said river.

Sec. 3. That the following tract of land, being a part of the said Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Standing Rock Agency, in the said Territory of Dakota, namely: Beginning at a point in the center of the main channel of the Missouri River, opposite the mouth of Cannon Ball River; thence down said center of the main channel to a point ten miles north of the mouth of the Moreau River, including also within said reservation all island, if any, in said river; thence due west to the one hundred and second degree of west longitude from Greenwich; thence north along said meridian to its intersection with the South Branch of Cannon Ball River, also known as Cedar Creek; thence down the main Cannon Ball River, and down said main Cannon Ball river to the center of the main channel of the Missouri River at the place of beginning.

Sec. 4. That the following tract of land, being a part of the said Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Cheyenne River Agency, in the said Territory of Dakota, namely: Beginning at a point in the center of the main channel of the Missouri River, ten miles north of the mouth of the Moreau River, said point being the southeastern cor-

ner of the Standing Rock Reservation; thence down said center of the main channel of the Missouri River, including also entirely within said reservation all islands, if any, in said river, to a point opposite the mouth of the Cheyenne River; thence west to said Cheyenne River, and up the same to its intersection with the one hundred and second meridian of longitude; thence north along said meridian to its intersection with a line due west from a point in the Missouri River ten miles north of the mouth of the Moreau River; thence due east to the place of beginning.

Sec. 5. That the following tract of land, being a part of the said Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Lower Brule Agency, in said Territory of Dakota, namely: Beginning on the Missouri River at Old Fort George; thence running due west to the western boundary of Presho County; thence running south on said western boundary to the forty-fourth degree of latitude; thence on said forty-fourth degree of latitude to western boundary of township number seventy-two; thence south on said township western line to an intersecting line running due west from Fort Lookout; thence eastwardly on said line to the center of the main channel of the Missouri River at Fort Lookout; thence north in the center of the main channel of the said river to the original starting point.

Sec. 6. That the following tract of land, being a part of the Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Crow Creek Agency, in said Territory of Dakota, namely: The whole of township one hundred and six, range seventy; township one hundred and seven, range seventy-one; township one hundred and eight, range seventy-one; township one hundred and eight, range seventy-two; township one hundred and nine, range seventy-two, and the

south half of township one hundred and nine, range seventy-one, and all except sections one, two, three, four, nine, ten, eleven, and twelve of township one hundred and seven, range seventy, and such parts as lie on the east or left bank of the Missouri River, of the following townships, namely: Township one hundred and six, and to seventy-one; township one hundred and seven, range seventy-two; township one hundred and eight, range seventy-three; township one hundred and eight, range seventy-four; township one hundred and eight, range seventy-five; township one hundred and eight, range seventy-six; township one hundred and nine, range seventy-three; township one hundred and nine, range seventy-four; south half of township one hundred and nine, range seventy-five, and township one hundred and seven, range seventy-three; also the west half of township one hundred and six, range sixty-nine, and sections sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, and thirty-three of township one hundred and seven, range sixty-nine.

Sec. 7. That each member of the Santee Sioux tribe of Indians now occupying a reservation in the State of Nebraska not having already taken allotments shall be entitled to allotments upon said reserve in Nebraska as follows: To each head of a family, one-quarter of a section; to each single person over eighteen years of age, one-eighth of a section; to each orphan child under eighteen years, one-eighth of a section; to each other person under eighteen years of age now living, one-sixteenth of a section; with title hereto, in accordance with the provisions of article six of the treaty concluded April twenty-ninth, eighteen hundred and sixty-eight, and the agreement with said Santee Sioux approved February twenty-eighth, eighteen hundred and seventy-seven, and rights under the same in all other respects conforming to this act. And said Santee Sioux shall be entitled to all other benefits under this act in the same manner and

with the same conditions as if they were residents upon said Sioux Reservation, receiving rations at one of the agencies herein named: *Provided*, That all allotments heretofore made to said Santee Sioux in Nebraska are hereby ratified and confirmed; and each member of the Flandreau band of Sioux Indians is hereby authorized to take allotments on the Great Sioux Reservation, or in lieu therefore shall be paid at the rate of one dollar per acre for the land to which they would be entitled, to be paid out of the proceeds of lands relinquished under this act, which shall be used under the direction of the Secretary of the Interior; and said Flandreau band of Sioux Indians is in all other respects entitled to the benefits of this act the same as if receiving rations and annuities at any of the agencies aforesaid.

Sec. 8. That the President is hereby authorized and required whenever in his opinion any reservation of such Indians, or any part thereof, is advantageous for agricultural or grazing purposes, and the progress in civilization of the Indians receiving rations on either or any of said reservations shall be such as to encourage the belief that an allotment in severalty to such Indians, or any of them, would be for the best interest of said Indians, to cause said reservation, or so much thereof as is necessary, to be surveyed, or re-surveyed, and to allot the lands in said reservation in severalty to the Indians located thereon as aforesaid, in quantities as follows: To each head of a family, three hundred and twenty acres; to each single person over eighteen years of age, one-fourth of a section; to each orphan child under eighteen years of age, one-fourth of a section; and to each other person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-eighth of a section. In case there is not sufficient land in either of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: *Provided*, That where the lands on any reservation are mainly valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual; or in case any two or more Indians who may be entitled to allotments shall so agree, the President may assign the grazing lands to which they may be entitled to them in one tract, and to be held and used in common.

Sec. 9. That all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act: *Provided*, That if any one entitled to an allotment shall fail to make a selection within five years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which selection shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner: *Provided*, That these sections as to the allotments shall not be compulsory without the consent of the majority of the adult members of the tribe, except that the allotments shall be made as provided for the orphans.

Sec. 10. That the allotments provided for in this act shall be made by special agents appointed by the President for

such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office.

Sec. 11. That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottee, which patents shall be of the legal effect, and declare that the United States does and will hold the lands thus allotted for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made or in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs, as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever, and patents shall issue accordingly. And each and every allottee under this act shall be entited to all the rights and privileges and be subject to all the provisions of section six of the act approved Februry eighth, eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians and for other purposes." *Provided*, That the President of the United States may in any case, in his discretion, extend the period by a term not exceeding ten years; and if any lease or conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such lease or conveyance or contract shall be absolutely null and void: *Provided further*, That the law of descent and partition in force in the State or Territory where the lands may be situated shall apply thereto after patents therefor have been executed and delivered. Each of the patents aforesaid shall be recorded in the General Land Office, and afterward delivered, free of charge, to the allottee entitled thereto.

Sec. 12. That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner, if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which said reservation is held of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress: *Provided, however*, That all lands adapted to agriculture, with or without irrigation, so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers, and shall be disposed of by the United States to actual and bona-fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: *And provided further*, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years' occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the

United States for the sole use of the tribe or tribes of Indians to whom such reservation belonged; and the same, with interest thereon at five per centum per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians, or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterward, delivered, free of charge, to the allottee entitled thereto.

Sec. 13. That any Indian receiving and entitled to rations and annuities at either of the agencies mentioned in this act at the time the same shall take effect, but residing upon any portion of said Great Reservation not included in either of the separate reservations herein established, may, at his option, within one year from the time when this act shall take effect, and within one year after he has been notified of his said right of option in such manner as the Secretary of the Interior shall direct by recording his election with the proper agent at the agency to which he belongs, have the allotment to which he would be otherwise entitled on one of said separate reservations upon the land where such Indian may then reside, such allotment in all other respects to conform to the allotments hereinbefore provided. Each member of the Ponca tribe of Indians now occupying a part of the old Ponca Reservation, within the limits of the said Great Sioux Reservation, shall be entitled to allotments upon said old Ponca Reservation as follows: To each head of a family, three hundred and twenty acres; to each single person over eighteen years of age, one-fourth of a section; to each orphan child under eighteen years of age, one-fourth of a section; and to each other person under eighteen years of age now living, one-eighth of a section, with title thereto and rights under the same in all other respects conforming to this act. And said Poncas shall be entitled to all other benefits under this act in the same manner and with the same conditions as if they were a part of the Sioux Nation receiving rations at one of the agencies herein named. When allotments to the

Ponca tribe of Indians and to such other Indians as allotments are provided for by this act shall have been made upon that portion of said reservation which is described in the act entitled "An act to extend the northern boundary of the State of Nebraska," approved March twenty-eighth, eighteen hundred and eighty-two, the President shall, in pursuance of said act, declare that the Indian title is extinguished to all lands described in said act not so allotted hereunder, and thereupon all of said land not so allotted and included in said act of March twenty-eighth, eighteen hundred and eighty-two, shall be open to settlement as provided in this act: *Provided*, That the allotments to Ponca and other Indians authorized by this act to be made upon the land described in the said act entitled "An act to extend the northern boundary of the State of Nebraska," shall be made within six months from the time this act shall take effect.

Sec. 14. That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation created by this act available for agricultural purposes, the Secretary of the Interior be, and he is hereby authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such Indian reservation created by this act; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

Sec. 15. That if any Indian has, under and in conformity with the provisions of the treaty with the Great Sioux Nation concluded April twenty-ninth, eighteen hundred and sixty-eight, and proclaimed by the President February twenty-fourty, eighteen hundred and sixty-nine, or any existing law, taken allotments of land within or without the limits of any of the separate reservations established by this act, such allotments are hereby ratified and made valid, and

such Indian is entitled to a patent therefor in conformity with the provisions of said treaty and existing law and of the provisions of this act in relation to patents for individual allotments.

Sec. 16. That the acceptance of this act by the Indians in manner and form as required by the said treaty concluded between the different bands of the Sioux Nation of Indians and the United States, April twenty-ninth, eighteen hundred and sixty-eight, and proclaimed by the President February twenty fourth, eighteen hundred and sixty-nine, as hereinafter provided, shall be taken and held to be a release of all title on the part of the Indians receiving rations and annuities on each of the said separate reservations, to the lands described in each of the other separate reservations so created, and shall be held to confirm in the Indians entitled to receive rations at each of said separate reservations, respectively, to their separate and exclusive use and benefit, all the title and interest of every name and nature secured therein to the different bands of the Sioux Nation by said treaty of April twenty-ninth, eighteen hundred and sixty eight. This release shall not affect the title of any individual Indian to his separate allotment on land not included in any of said separate reservations provided for in this act, which title is hereby confirmed, nor any agreement heretofore made with the Chicago, Milwaukee and Saint Paul Railroad Company or the Dakota Central Railroad Company for a right of way through said reservation; and for any lands acquired by any such agreement to be used in connection therewith, except as hereinafter provided; but the Chicago, Milwaukee and Saint Paul Railway Company and the Dakota Central Railroad Company shall, respectively, have the right to take and use, prior to any white person, and to any corporation, the right of way provided for in said agreement, with not to exceed twenty acres of land in addition to the right of way, for stations for every ten miles of road; and said companies shall also, respectively, have the

right to take and use for right of way, side-track, depot and station privileges, machine-shop, freight-house, round house, and yard facilities, prior to any white person, and to any corporation or association, so much of the two separate sections of land embraced in said agreements; also, the former company so much of the one hundred and eighty-eight acres, and the latter company so much of the seventy five acres, on the east side of the Missouri River, likewise embraced in said agreements, as the Secretary of the Interior shall decide to have been agreed upon and paid for by said railroad, and to be reasonably necessary upon each side of said river for approaches to the bridge of each of said companies to be constructed across the river, for right of way, side-track, depot and station privileges, machine-shop, freight house, round-house, and yard facilities, and no more: *Provided*, That the said railway companies shall have made the payments according to the terms of said agreements for each mile of right of way and each acre of land for railway purposes, which said companies take and use under the provisions of this act, and shall satisfy the Secretary of the Interior to that effect: *Provided further*, That no part of the lands herein authorized to be taken shall be sold or conveyed except by way of sale of, or mortgage of the railway itself. Nor shall any of said lands be used directly or indirectly for town site purposes, it being the intention hereof that said lands shall be held for general railway uses and purposes only, including stock yards, warehouses, elevators, terminal and other facilities of and for said railways: but nothing herein contained shall be construed to prevent any such railroad company from building upon such lands houses for the accommodation or residence of their employees, or leasing grounds contiguous to its tracks for warehouse or elevator purposes connected with said railways: *And provided further*, That said payments shall be made and said conditions performed within six month after this act shall take effect: *And provided further*, That said railway companies and each of them shall, within nine

months after this act takes effect, definitely locate their respective lines of road, including all station grounds and terminals across and upon the lands of said reservation designated in said agreements, and shall also, within the said period of nine months, file with the Secretary of the Interior a map of such definite location, specifying clearly the line of road the several station grounds and the amount of land required for railway purposes, as herein specified, of the said separate sections of land and said tracts of one hundred and eighty-eight acres and seventy-five acres, and the Secretary of the Interior shall, within three months after the filing of such map, designate the particular portions of said sections and of said tracts of land which the said railway companies respectively may take and hold under the provisions of this act for railway purposes. And the said railway companies, and each of them, shall, within three years after this act takes effect, construct, complete, and put in operation their said lines of road; and in case the said lines of road are not definitely located and maps of location filed within the periods hereinbefore provided, or in case the said lines of road are not constructed, completed, and put in operation within the time herein provided, then, and in either case, the lands granted for right of way, station grounds, or other railway purposes, as in this act provided, shall, without any further act or ceremony, be declared by proclamation of the President forfeited, and shall, without entry or further action on the part of the United States, revert to the United States and be subject to entry under the other provisions of this act; and whenever such forfeiture occurs the Secretary of the Interior shall ascertain the fact and give due notice thereof to the local land officers, and thereupon the lands so forfeited shall be open to homestead entry under the provisions of this act.

Sec. 17. That it is hereby enacted that the seventh article of the said treaty of April twenty-ninth, eighteen hundred

and sixty-eight, securing to said Indians the benefits of education, subject to such modifications as Congress shall deem most effective to secure to said Indians equivalent benefits of such education, shall continue in force for twenty years from and after the time this act shall take effect; and the Secretary of the Interior is hereby authorized and directed to purchase, from time to time, for the use of said Indians, such and so many American breeding cows of good quality, not exceeding twenty-five thousand in number, and bulls of like quality, not exceeding one thousand in number, as in his judgment can be under regulations furnished by him, cared for and preserved, with their increase, by said Indians: *Provided*, That each head of family or single person over the age of eighteen years, who shall have or may hereafter take his or her allotment of land in severalty, shall be provided with two milch cows, one pair of oxens, with yoke and chain, or two mares and one set of harness in lieu of said oxen, yoke and chain, as the Secretary of the Interior may deem advisable, and they shall also receive one plow, one wagon, one harrow, one hoe, one axe, and one pitchfork, all suitable to the work they may have to do, and also fifty dollars in cash; to be expended under the direction of the Secretary of the Interior in aiding such Indians to erect a house and other buildings suitable for residence or the improvement of his allotment; no sales, barters or bargains shall be made by any person other than said Indians with each other, of any of the personal property hereinbefore provided for, and any violation of this provision shall be deemed a misdemeanor and punished by fine not exceeding one hundred dollars, or imprisonment not exceeding one year or both in the discretion of the court; That for two years the necessary seeds shall be provided to plant five acres of ground into different crops, if so much can be used, and provided that in the purchase of such seed preference shall be given to Indians who may have raised the same for sale, and so much money as shall be necessary for this purpose is hereby appropriated out of any money in the Treasury not

otherwise appropriated; and in addition thereto there shall be set apart, out of any money in the Treasury not otherwise appropriated, the sum of three millions of dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest of which, at five per centum per annum, shall be appropriated, under the direction of the Secretary of the Interior, to the use of the Indians receiving rations and annuities upon the reservations created by this act, in proportion to the numbers that shall so receive rations and annuities at the time this act takes effect, as follows: One-half of said interest shall be so expended for the promotion of industrial and other suitable education among said Indians, and the other half thereof in such manner and for such purposes, including reasonable cash payments per capita as, in the judgment of said Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support; and the Santee Sioux, the Flandreau Sioux, and the Ponca Indians shall be included in the benefits of said permanent fund, as provided in sections seven and thirteen of this act: *Provided*, That after the Government has been reimbursed for the money expended for said Indians under the provisions of this act, the Secretary of the Interior may, in his discretion, expend, in addition to the interest of the permanent fund, not to exceed ten per centum per annum of the principal of said fund in the employment of farmers and in the purchase of agricultural implements, teams, seeds, including reasonable cash payments per capita, and other articles necessary to assist them in agricultural pursuits, and he shall report to Congress in detail each year his doings hereunder. And at the end of fifty years from the passage of this act, said fund shall be expended for the purpose of promoting education, civilization, and self-support among said Indians, or otherwise distributed among them as Congress shall from time to time thereafter determine.

Sec. 18. That if any land in said Great Sioux Reservation is now occupied and used by any religious society for the purpose of missionary or educational work among said Indians, whether situate outside of or within the lines of any reservation constituted by this act, or if any such land is so occupied upon the Santee Sioux Reservation, in Nebraska, the exclusive occupation and use of said land, not exceeding one hundred and sixty acres in any one tract, is hereby, with the approval of the Secretary of the Interior, granted to any such society so long as the same shall be occupied and used by such society for educational and missionary work among said Indians; and the Secretary of the Interior is hereby authorized and directed to give to such religious society patent of such tract of land to the legal effect aforesaid; and for the purpose of such educational or missionary work any such society may purchase, upon any of the reservations herein created, any land not exceeding in any one tract one hundred and sixty acres, not interfering with the title in severalty of any Indian, and with the approval of and upon such terms, not exceeding one dollar and twenty-five cents an acre, as shall be prescribed by the Secretary of the Interior. And the Santee Normal Training School may, in like manner, purchase for such educational or missionary work on the Santee Reservation, in addition to the foregoing, in such location and quantity, not exceeding three hundred and twenty acres, as shall be approved by the Secretary of the Interior.

Sec. 19. That all the provisions of the said treaty with the different bands of the Sioux Nation of Indians concluded April twenty-ninth, eighteen hundred and sixty-eight, and the agreement with the same approved February twenty-eight, eighteen hundred and seventy-seven, not in conflict with the provisions and requirements of this act, are hereby continued in force according to their tenor and limitation, anything in this act to the contrary notwithstanding.

Sec. 20. That the Secretary of the Interior shall cause to be erected not less than thirty school-houses, and more, if found necessary, on the different reservations, at such points as he shall think for the best interests of the Indians, but at such distance only as will enable as many as possible attending schools to return home nights, as white children do attending district schools: *And provided*, That any white children residing in the neighborhood are entitled to attend the said school on such terms as the Secretary of the Interior shall prescribe.

Sec. 21. That all the lands in the Great Sioux Reservation outside of the separate reservations herein described are hereby restored to the public domain, except American Island, Farm Island, and Niobrara Island, and shall be disposed of by the United States to actual settlers only, under the provisions of the homestead law (except section two thousand three hundred and one thereof) and under the law relating to town-sites: *Provided*, That each settler, under and in accordance with the provisions of said homestead acts, shall pay to the United States, for the land so taken by him, in addition to the fees provided by law, the sum of one dollar and twenty-five cents per acre for all lands disposed of within the first three years after the taking effect of this act, and the sum of seventy-five cents per acre for all lands disposed of within the next two years following thereafter, and fifty cents per acre for the residue of the lands then undisposed of, and shall be entitled to a patent therefor according to said homestead laws, and after the full payment of said sums: but the rights of honorably discharged Union soldiers and sailors in the late civil war as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States, shall not be abridged, except as to said sums: *Provided*, That all lands herein opened to settlement under this act remaining undisposed of at the end of ten years from

the taking effect of this act shall be taken and accepted by the United States and paid for by said United States at fifty cents per acre, which amount shall be added to and credited to said Indians as part of their permanent fund, and said lands shall thereafter be part of the public domain of the United States, to be disposed of under the homestead laws of the United States, and the provisions of this act; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of final entry, shall be null and void: *Provided*, That there shall be reserved public highways four rods wide around every section of land allotted, or opened to settlement by this act, the section lines being the center of said highways; but no deduction shall be made in the amount to be paid for each quarter-section of land by reason of such reservation. But if the said highway shall be vacated by any competent authority the title to the respective strips shall inure to the then owner of the tract of which it formed a part by the original survey. *And provided further*, That nothing in this act contained shall be so construed as to affect the right of Congress or of the government of Dakota to establish public highways, or to grant to railroad companies the right of way through said lands, or to exclude the said lands, or any thereof, from the operation of the general laws of the United States now in force granting to railway companies the right of way and depot grounds over and upon the public lands, American Island, an island in the Missouri River, near Chamberlain, in the Territory of Dakota, and now a part of the Sioux Reservation, hereby donated to the said city of Chamberlain: *Provided further*, That said city of Chamberlain shall formally accept the same within one year from the passage of this act, upon the express condition that the same shall be preserved and used for all time entire as a public park, and for no other purpose, to which all persons shall have free access; and said city shall have authority to adopt all proper rules and regulations for the improvement and care of said park; and upon the failure of any of said

conditions the said island shall revert to the United States, to be disposed of by future legislation only. Farm Island, an island in the Missouri River near Pierre, in the Territory of Dakota, and now a part of the Sioux Reservation, is hereby donated to the said city of Pierre: *Provided further*, That said City of Pierre shall formally accept the same within one year from the passage of this act, upon the express condition that the same shall be preserved and used for all time entire as a public park, and for no other purpose, to which all persons shall have free access; and said city shall have authority to adopt all proper rules and regulations for the improvement and care of said park; and upon the failure of any of said conditions the said island shall revert to the United States, to be disposed of by future legislation only. Niobrara Island, an island in the Niobrara River, near Niobrara, and now a part of the Sioux Reservation, is hereby donated to the said city of Niobrara: *Provided further*, That the said city of Niobrara, shall formally accept the same within one year from the passage of this act, upon the express condition that the same shall be preserved and used for all time entire as a public park, and for no other purpose, to which all persons shall have free access; and said city shall have authority to adopt all proper rules and regulations for the improvement and care of said park; and upon the failure of any of said conditions the said island shall revert to the United States, to be disposed of by future legislation only; *And provided further*, That if any full or mixed blood Indian of the Sioux Nation shall have located upon Farm Island, American Island, or Niobrara Island before the date of the passage of this act, it shall be the duty of the Secretary of the Interior, within three months from the time this act shall have taken effect, to cause all improvements made by any such Indian so located upon either of said islands, and all damage that may accure to him by a removal therefrom, to be appraised, and upon the payment of the sum so determined, within six months after notice thereof by the city to which the island is herein donated to such Indian, said Indian shall be required to remove from said island, and shall be entitled to select instead of such location his allotment according to the provisions of this act upon any of the reservations herein established, or upon any land opened to settlement by this act not already located upon.

Sec. 22. That all money accruing from the disposal of lands in conformity with this act shall be paid into the Treasury of the United States and be applied solely as follows: First, to the reimbursement of the United States for all necessary actual expenditures contemplated and provided for under the provisions of this act, and the creation of the permanent fund hereinbefore provided; and after such reimbursement to the increase of said permanent fund for the purposes hereinbefore provided.

Sec. 23. That all persons who, between the twenty-seventh day of February, eighteen hundred and eighty-five, and the seventeenth day of April, eighteen hundred and eighty-five, in good faith, entered upon or made settlements with intent to enter the same under the homestead or preemption laws of the United States upon any part of the Great Sioux Reservation lying east of the Missouri River, and known as the Crow Creek and Winnebago Reservation, which, by the President's proclamation of date February twenty-seventh, eighteen hundred and eighty-five, was declared to be open to settlement, and not included in the new reservation established by section six of this act, and who, being otherwise legally entitled to make such entries, located or attempted to locate thereon homestead, preemption, or town site claims, by actual settlement and improvement of any portion of such lands, shall, for a period of ninety days after the proclamation of the President required to be made by this act, have a right to re-enter upon said claims and procure title thereto under the homestead or preemption laws of the United States, and complete the same as required therein, and their said claims shall, for such

time, have a preference over late entries; and when they shall have in other respects shown themselves entitled and shall have complied with the law regulating such entries, and, as to homesteads, with the special provisions of this act, they shall be entitled to save said lands, and patents therefor shall be issued as in like cases: *Provided*, That pre-emption claimants shall reside on their lands the same length of time before procuring title as homestead claimants under this act. The price to be paid for town-site entries shall be such as is required by law in other cases, and shall be paid into the general fund provided for by this act.

Sec. 24. That sections sixteen and thirty-six of each township of the lands open to settlement under the provisions of this act, whether surveyed or unsurveyed, are hereby reserved for the use and benefit of the public schools, as provided by the act organizing the Territory of Dakota; and whether surveyed or unsurveyed said sections shall not be subject to claim, settlement, or entry under the provision of this act or any of the land laws of the United States: *Provided, however*, That the United States shall pay to said Indians, out of any moneys in the Treasury not otherwise appropriated, the sum of one dollar and twenty-five cents per acre for all lands reserved under the provisions of this section.

Sec. 25. That there is hereby appropriated the sum of one hundred thousand dollars, out of any money in the Treasury not otherwise appropriated, or so much thereof as may be necessary, to be applied and used towards surveying the lands herein described as being opened for settlement, said sum to be immediately available; which sum shall not be deducted from the proceeds of lands disposed of under this act.

Sec. 26. That all expenses for the surveying, platting, and disposal of the lands opened to settlement under this act

shall be borne by the United States, and not deducted from the proceeds of said lands.

Sec. 27. That the sum of twenty-eight thousand two hundred dollars, or so much thereof as may be necessary, be, and hereby is, appropriated out of any money in the Treasury not otherwise appropriated, to enable the Secretary of the Interior to pay to such individual Indians of the Red Cloud and Red Leaf bands of Sioux as he shall ascertain to have been deprived by the authority of the United States of ponies in the year eighteen hundred and seventy-six, at the rate of forty dollars for each pony; and he is hereby authorized to employ such agent or agents as he may deem necessary in ascertaining such facts as will enable him to carry out this provision, and to pay them therefor such sums as shall be deemed by him fair and just compensation: *Provided*, That the sum paid to each individual Indian under this provision shall be taken and accepted by such Indian in full compensation for all loss sustained by such Indian in consequence of the taking from him of ponies as aforesaid: *And provided further*, That if any Indian entitled to such compensation shall have deceased, the sum to which such Indian would be entitled shall be paid to his heirs-in-law, according to the laws of the Territory of Dakota.

Sec. 28. That this act shall take effect, only, upon the acceptance thereof and consent thereto by the different bands of the Sioux Nation of Indians, in manner and form prescribed by the twelfth article of the treaty between the United States and said Sioux Indians concluded April twenty-ninth, eighteen hundred and sixty-eight, which said acceptance and consent, shall be made known by proclamation by the President of the United States, upon satisfactory proof presented to him, that the same has been obtained in the manner and form required, by said twelfth article of said treaty; which proof shall be presented to him within one year from the passage of this act; and upon failure of such

proof and proclamation this act becomes of no effect and null and void.

Sec. 29. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of twenty five thousand dollars, or so much thereof as may be necessary which sum shall be expended, under the direction of the Secretary of the Interior, for procuring the assent of the Sioux Indians to this act provided in section twenty-seven.

Sec. 30. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved, March 2, 1889.

[#58A]

Proclamation of February 10, 1890, 26 Stat. 1554

PROCLAMATIONS. No. 9.

[No. 9]

By the President of the United States of America.

A PROCLAMATION

Whereas, it is provided in the Act of Congress, approved March second, eighteen hundred and eighty-nine, entitled "An Act to divide a portion of the reservation of the Sioux Nation of Indians in Dakota into separate reservations and to secure the relinquishment of the Indian title to the remainder, and for other purposes," "that this act shall take effect, only, upon the acceptance thereof and consent thereto by the different bands of the Sioux Nation of Indians, in manner and form prescribed by the twelfth article of the treaty between the United States and said Sioux Indians concluded April twenty-ninth, eighteen hundred and sixty-eight, which said acceptance and consent shall be made known by proclamation by the President of the United States, upon a satisfactory proof presented to him, that the

same has been obtained in the manner and form required, by said twelfth article of said treaty; which proof shall be presented to him within one year from the passage of this act; and upon failure of such proof and proclamation this act becomes of no effect and null and void," and

Whereas satisfactory proof has been presented to me that the acceptance of and consent to the provisions of the said act by the different bands of the Sioux Nation of Indians have been obtained in manner and form as therein required;

Now, therefore, I, Benjamin Harrison, President of the United States, by virtue of the power in me vested, do hereby make known and proclaim the acceptance of said act by the different bands of the Sioux Nation of Indians, and the consent thereto by them as required by the act, and said act is hereby declared to be in full force and effect, subject to all the provisions, conditions, limitations and restrictions, therein contained.

All persons will take notice of the provisions of said act, and of the conditions, limitations and restrictions therein contained, and be governed accordingly.

I furthermore notify all persons to particularly observe that by said act certain tracts or portions of the Great Reservation of the Sioux Nation in the Territory of Dakota, as described by metes and bounds are set apart as separate and permanent reservations for the Indians receving rations and annuities at the respective agencies therein named;

That any Indian receiving and entitled to rations and annuities at either of the agencies mentioned in this act at the time the same shall take effect, but residing upon any portion of said Great Reservation not included in either of the separate reservations herein established, may, at his option, within one year from the time when this act shall take effect, and within one year after he has been notified of his said right of option in such manner as the Secretary of the Interior shall direct by recording his election with the proper agent at the agency to which he belongs, have the allotment to which he would be otherwise entitled on one of said

separate reservations upon the land where such Indian may then reside.

That each member of the Ponca tribe of Indians now occupying a part of the old Ponca Reservation, within the limits of the said Great Sioux Reservation, shall be entitled to allotments upon said old Ponca Reservation, in quantities as therein set forth, and that when allotments to the Ponca tribe of Indians, and to such other Indians as allotments are provided for by this act, shall have been made upon that portion of said reservation which is described in the act entitled "an act to extend the northern boundary of the State of Nebraska," approved March twenty-eighth, eighteen hundred and eighty-two, the President shall, in pursuance of said act, declare that the Indian title is extinguished to all lands described in said act not so allotted hereunder, and thereupon all of said land not so allotted and included in said act of March twenty-eighth, eighteen hundred and eighty-two, shall be open to settlement as provided in this act;

That protection is guaranteed to such Indians as may have taken allotments either within or without the said separate reservations under the provisions of the treaty with the Great Sioux Nation, concluded April twenty-ninth, eighteen hundred and sixty-eight; and that provision is made in said act for the release of all title on the part of said Indians receiving rations and annuities on each separate reservation, to the lands described in each of the other separate reservations, and to confirm in the Indians entitled to receive rations at each of said separate reservations, respectively, to their separate and exclusive use and benefit, all the title and interest of every name and nature secured to the different bands of the Sioux Nation by said treaty of April twenty-ninth, eighteen hundred and sixty-eight; and that said release shall not affect the title of any individual Indian to his separate allotment of land not included in any of said separate reservations, nor any agreement heretofore

made with the Chicago, Milwaukee and Saint Paul Railroad Company or the Dakota Central Railroad Company respecting certain lands for right of way, station grounds, etc., regarding which certain prior rights and privileges are reserved to and for the use of said railroad companies, respectively, upon the terms and conditions set forth in said act:

That it is therein provided that if any land in said Great Sioux Reservation is occupied and used by any religious society at the date of said act for the purpose of missionary or educational work among the Indians, whether situate outside of or within the limits of any of the separate reservations, the same, not exceeding one hundred and sixty acres in any one tract, shall be granted to said society for the purposes and upon the terms and conditions therein named, and

Subject to all the conditions and limitations in said act contained, it is therein provided that all the lands in the Great Sioux Reservation outside of the separate reservations described in said act, except American Island, Farm Island, and Niobrara Island, regarding which Islands special provisions are therein made, and sections sixteen and thirty-six in each township thereof (which are reserved for school purposes) shall be disposed of by the United States, upon the terms at the price and in the manner therein set forth, to actual settlers only, under the provisions of the homestead law (except section two thousand three hundred and one thereof) and under the law relating to town-sites.

That section twenty-three of said act provides "that all persons who, between the twenty-seventh day of February, eighteen hundred and eighty-five, and the seventeenth day of April, eighteen hundred and eighty-five, in good faith, entered upon or made settlements with intent to enter the same under the homestead or pre-emption laws of the United States upon any part of the Great Sioux Reservation

lying east of the Missouri River, and known as the Crow Creek and Winnebago Reservation, which, by the President's proclamation of date February twenty-seventh, eighteen hundred and eighty-five, was declared to be open to settlement, and not included in the new reservation established by section six of this act, and who, being otherwise legally entitled to make such entries, located or attempted to locate thereon homestead, pre-emption, or town-site claims by actual settlement and improvement of any portion of such lands, shall, for a period of ninety days after the proclamation of the President required to be made by this act, have a right to re-enter upon said claims and procure title thereto under the homestead or pre-emption laws of the United States, and complete the same as required therein, and their said claims shall, for such time, have a preference over later entries: and when they shall have in other respects shown themselves entitled and shall have complied with the law regulating such entries, and, as to homesteads, with the special provisions of this act, they shall be entitled to have said lands, and patents therefor shall be issued as in like cases: *Provided*, That pre-emption claimants shall reside on their lands the same length of time before procuring title as homestead claimants under this act. The price to be paid for town-site entries shall be such as is required by law in other cases, and shall be paid into the general fund provided for by this act."

It is, furthermore, hereby made known that there has been and is hereby reserved from entry or settlement that tract of land now occupied by the agency and school buildings at the Lower Brule Agency, to-wit:

The west half of the southwest quarter of section twenty-four; the east half of the southeast quarter of section twenty-three; the west half of the northwest quarter of section twenty-five; the east half of the northeast quarter of section twenty-six, and the northwest fractional quarter of the southeast quarter of section twenty-six; all in township one

hundred and four, north of range seventy-two, west of the fifth principal meridian;

That there is also reserved as aforesaid the following described tract within which the Cheyenne River Agency, school and certain other buildings are located, to wit: Commencing at a point in the center of the main channel of the Missouri River opposite Deep Creek, about three miles south of Cheyenne River; thence due west five and one half miles; thence due north to the Cheyenne River; thence down said river to the center of the main channel thereof to a point in the center of the Missouri River due east or opposite the mouth of said Cheyenne River; thence down the center of the main channel of the Missouri River to the place of beginning:

That in pursuance of the provisions contained in section one of said act, the tract of land situate in the State of Nebraska and described in said act as follows; to wit: "Beginning at a point on the boundary-line between the State of Nebraska and the Territory of Dakota, where the range line between ranges forty-four and forty-five west of the sixth principal meridian in the Territory of Dakota, intersects said boundary-line; thence east along said boundary-line five miles; thence due south five miles; thence due west ten miles; thence due north to said boundary-line; thence due east along said boundary-line to the place of beginning," same is continued in a state of reservation so long as it may be needed for the use and protection of the Indians receiving rations and annuities at the Pine Ridge Agency.

Warning is hereby also expressly given to all persons not to enter or make settlement upon any of the tracts of land specially reserved by the terms of said act, or by this proclamation, or any portion of any tracts of land to which any individual member of either of the bands of the great Sioux Nation, or the Ponca tribe of Indians, shall have a preference right under the provisions of said act; and

further, to in no wise interfere with the occupancy of any of said tracts by any of said Indians, or in any manner to disturb, molest or prevent the peaceful possession of said tracts by them.

The surveys required to be made of the lands to be restored to the public domain under the provisions of the said act, and as in this proclamation set forth will be commenced and executed as early as possible.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this tenth day of February in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fourteenth.

[SEAL]

Benj. Harrison.

By the President:
James G. Blaine,
Secretary of State.

[#58B]

DAWES ACT

Chap. 119. — An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is authorized, whenever in his opinion any

reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes to cause said reservation, or any part thereof, to be surveyed or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows:

To each head of a family, one-quarter of a section;

To each single person over eighteen years of age, one-eighth of a section;

To each orphan child under eighteen years of age, one-eighth of a section; and

To each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section: *Provided,* That in case there is not sufficient land in any of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: *And provided further,* That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act: *And provided further,* That when the lands allotted are only valuable for grazing purposes an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.

Sec. 2. That all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the

improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act: *Provided*, That if any one entitled to any allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which election shall be allotted as in cases where selections are made by the Indians and patents shall issue in like manner.

Sec. 3. That the allotments provided for in this act shall be made by special agents appointed by the President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office.

Sec. 4. That where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quan-

tities and manner as provided in this act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands, the grant to such indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as herein provided. And the fees to which the officers of such local land-office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

Sec. 5. That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotments shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto after patents

therefor have been executed and delivered, except as herien otherwise provided; and the laws of the State of Kansas regulating the descent and partition of real estate shall, so far as practicable, apply to all lands in the Indian Territory which may be allotted in severalty under the provisions of this act: *And provided further*, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interest of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress: *Provided however*, That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe , subject to grants which Congress may make in aid of eduction: *And provided further*, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians; to whom such reservations belonged; and the same, with interest thereon at three per cent per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterward delivered, free of charge, to the allottee entitled thereto. And if any religious society or other organization is now occupying any of the public lands to which this act is applicable, for religious or educational work among the Indians, the Secretary of the Interior is hereby authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law. And hereafter in the employment of Indian police, or any other employes in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred.

Sec. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence

separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

Sec. 7. That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior be, and he is hereby authorized to prescribe such rules and regualtions as he may deem necessry to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and no other appropriation or grant of water by an riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

Sec. 8. That the provision of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by executive order.

Sec. 9. That for the purpose of making the surveys and resurveys mentioned in section two of this act, there be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of one hundred thousand dollars, to be repaid proportionately out of the proceeds of the sales of such land as may be acquired from the Indians under the provisions of this act.

Sec. 10. That nothing in this act contained shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation.

Sec. 11. That nothing in this act shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in Southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe.

Approved, February 8, 1887.

Chap. 383. — An act to amend and further extend the benefits of the act approved February eighth, eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States over the Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one of the act entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," approved February eighth, eighteen hundred and eighty-seven, be, and the same is hereby, amended so as to read as follows:

"Sec. 1. That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an Act of Congress or Executive order setting apart the same for their use, the President of the United States be,and he hereby is, authorized, whenever in his opinion any reservation, or any part thereof, of such Indians is

advantageous for agricultural or grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed, if necessary, and to allot to each Indian located thereon one-eighth of a section of land: *Provided*, That in case there is not sufficient land in any of said reservations to allot lands to each individual in quantity as above provided the land in such reservation or reservations shall be allotted to each individual pro rata, as near as may be, according to legal subdivisions: *Provided further*, That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty to certain classes in quantity in excess of that herein provided the President, in making allotments upon such reservation, shall allot the land to each individual Indian of said classes belonging thereon in quantity as specified in such treaty or act, and to other Indians belonging thereon in quantity as herein provided: *Provided further*, That where existing agreements or laws provide for allotments in accordance with the provisins of said act of February eighth, eighteen hundred and eighty-seven, or in quantities substantially as therein provided, allotments may be made in quantity as specified in this act, with the consent of the Indians, expressed in such manner as the President, in his discretion, may require: *And provided further*, That when the lands allotted, or any legal subdivisin thereof, are only valuable for grazing purposes, such lands shall be allotted in double quantities.

Sec. 2. That where allotments have been made in whole or in part upon any reservation under the provisions of said act of February eighth, eighteen hundred and eighty-seven, and the quantity of land in such reservation is sufficient to give each member of the tribe eighty acres, such allotments shall be revised and equalized under the provisions of this act: *Provided*, That no allotment heretofore approved by the Secretary of the Interior shall be reduced in quantity.

Sec. 3. That whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or other disability, any allottee under the provisions of said act, or any other act or treaty can not personally and with benefit to himself occupy or improve his allotment or any part thereof the same may be leased upon such terms, regualtions and conditions as shall be prescribed by such Secretary, for a term not exceeding three years for farming or grazing, or ten years for mining purposes: *Provided*, That where lands are occupied by Indians who have bought and paid for the same, and which lands are not needed for farming or agricultural purposes, and are not desired for individual allotments, the same may be leased by authority of the Council speaking for such Indians, for a period not to exceed five years for grazing, or ten years for mining purposes in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior.

Sec. 4. That where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children, in quantities and manner as provided in the foregoing section of this amending act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions provided in the act to which this is an amendment. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf

for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

Sec. 5. That for the purpose of determining the descent of land to the heirs of any deceased Indian under the provisions of the fifth section of said act, whenever any male and female Indian shall have co-habited together as husband and wife according to the custom and manner of Indian life the issue of such co-habitation shall be, for the purpose aforesaid, taken and deemed to be the legitimate issue of the Indians so living together, and every Indian child, otherwise illegitimate, shall for such purpose be taken and deemed to be the legitimate issue of the father of such child: *Provided*, That the provisions of this act shall not be held or construed as to apply to the lands commonly called and known as the "Cherokee Outlet": *And provided further*, That no allotment of lands shall be made or annuities of money paid to any of the Sac and Fox of the Missouri Indians who were not enrolled as members of said tribe on January first, eighteen hundred and ninety; but this shall not be held to impair or otherwise affect the rights and equities of any person whose claim to membership in said tribe is now pending and being investigated.

Approved, February 28, 1891.

[#59]

Department of Interior decision, 56 I.D. 330, (June 15, 1948).

RESTORATION TO TRIBAL OWNERSHIP OF CEDED COLORADO UTE INDIAN LANDS

Opinion, June 15, 1938

Kirgis, *Acting Solicitor:*

At the instance of the Commissioner of Indian Affairs you [the Secretary of the Interior] have requested the opinion of

this office on the authority of the Secretary of the Interior to restore to tribal ownership under section 3 of the Indian Reorganization Act (June 18, 1934, 48 Stat. 984), the remaining undisposed of lands in Colorado ceded by the Confederate Bands of Ute Indians under the act of June 15, 1880 (21 Stat. 199). In phrasing the question, the Indian Office has asked whether section 3 is applicable to these lands in Colorado, "not situated adjacent to the existing Southern Ute Reservation." While this phrasing appears to restrict the question, it is believed that the Indian Office intends to request that all angles concerning the applicability of section 3 of the Indian Reorganization Act be determined. It is my intent to determine the matter in a comprehensive manner in view of the fact that the land involved is unusually large in extent, consisting of approximately 4,000,000 acres, and in view of the complicated legal and practical problems involved.

Section 3 of the Indian Reorganization Act reads as follows:

> Sec. 3. The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: *Provided, however*, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this act: *Provided further*, That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation: * * *. (Further provisos deal only with Papago Reservation.)

This section lays down two prerequisites for the application of the section to "ceded Indian lands." First, the Secretary of the Interior must find that the restoration to

tribal ownership will be in the public interest. Secondly, the lands involved must be "remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public lands laws of the United States." The finding of public interest, while a requirement of law, involves the determination of administrative questions which need not be discussed in this opinion. It is sufficient to point out that a restoration is not a mandatory but a discretionary act to be weighed as a matter of public interest. The second prerequisite involves the determination whether, as a matter of law, the description of the lands subject to restoration applies to these ceded Colorado Ute lands. In making this determination the applicability of the various terms used in the description will be discussed.

I. The Colorado Ute Area as an "Indian Reservation"

Lands to be restored must be surplus lands "of any Indian reservation." Therefore a first question involves the history and background of the Colorado Ute lands as an Indian reservation. In the first 20 years following the treaty of Guadalupe Hidalgo with Mexico in 1848, the United States entered into negotiations with various of the Indian tribes occupying the area acquired from Mexico. Among the treaties made was one with the "Utahs" (December 30, 1849, 9 Stat. 984) for obtaining free passage through the "territory of the Utahs." In 1863 a treaty was made with the Tabeguache Band of Ute Indians (proclaimed December 14, 1864, 13 Stat. 673), by which the band relinquished its right and interest in all lands within the United States except a designated area. The treaty expressly declined to recognize any title or right of the band to the area ceded or reserved except that possessed by the Indians under the laws of Mexico. It has been claimed that the Indians had no title or interest under the laws of Mexico in the lands which they occupied and were not recognized by the United States as having the right of occupancy conceded to other Indian tribes in the United States. However, whatever may have been the interest of the Ute Indians in the lands occupied by them in this period, the treaty of March 2, 1868 (16 Stat. 619), with various bands of Ute Indians, who have since been commonly known as the Confederated Bands of Ute Indians, established a reservation for these Indians having the same status as any other Indian reservation in the United States. This treaty set apart a defined territory, consisting of approximately 15,000,000 acres, for the "absolute use and occupation" of these Ute Indians. The status of this territory as a reservation has been uniformly recognized by the Congress, the Court of Claims (*The Ute Indians v. The United States*, 45 Ct. Cls. 440), and the Department. The definition of an Indian reservation by the Supreme Court in *Minnesota v. Hitchcock*, 185 U.S. 373, 389, 390, that an Indian reservation is created when from what has been done there results a certain defined tract appropriated to Indian purposes, clearly covers the reservation of the Utes established by the 1868 treaty. In 1874 (18 Stat. 36), this reservation was reduced by approximately 3½ million acres through a cession by the Indians in consideration of a specified perpetual annuity, and the Indians retained no further interest in the lands thus ceded.

The reservation of the Confederated Bands of Ute Indians, as diminished by the 1874 cession, was the subject of the 1880 act under which the Confederated Bands ceded the lands involved in this opinion. The specific provisions of the 1880 act, its purpose and legal effect will be set forth in some detail later in this opinion. The actual result of the 1880 act, however, was that the Confederated Bands were divided into three groups, the Uncompahgre and White River Utes being located in Utah and the Southern Utes remaining in the southern portion of the reservation. All of the remainder of the reservation has been sold, set apart as national forests, or otherwise disposed of, except the four million acres which are the subject of this opinion.

It might be claimed that in view of the above described results of the 1880 act, the reservation of the Confederated Bands was actually extinguished and that, therefore, the lands involved in this opinion are not surplus lands "of any Indian reservation." In my judgment, even if the reservation of the Confederated Bands of Utes were held no longer to exist, that fact alone would not negative the application of section 3 of the Indian Reorganization Act to the remaining undisposed of lands of that reservation. The phrase "of any Indian reservation" must be used in section 3 to describe the character and location of the lands at the time they were opened to disposal under the public land laws. The lands which may be restored to tribal ownership must be lands which were part of any Indian reservation, not of any forest or military reservation or of any other class of lands. Section 3 cannot mean that the lands must now have the character of Indian reservation lands, as they are not reservation lands but lands capable of being restored to reservation status under the Indian Reorganization Act. Nor can section 3 mean that the lands must be located within the geographical limits of an Indian reservation. In many instances of surplus land cessions entire portions of Indian reservations were cut off from the reservations and opened to disposal, while in other instances, by "similar legal instruments," areas located within the reservations were opened to disposal. Whether the lands opened to disposal were cut off from or out of existing Indian reservation is a matter of historical circumstance and not of legal significance. Moreover, nothing in section 3 requires the remaining undisposed of lands to lie in any particular geographic relation to an existing Indian reservation. Such a requirement would ignore the well-known facts that the location of such lands is purely fortuitous and that the lands, by their very nature, are scattered tracts.

II. Colorado Ute Lands Opened To Disposal Under the Public Land Laws

The surplus lands of the Colorado Ute Indian Reservation were opened to disposal in designated ways under the public land laws by section 3 of the act of June 15, 1880. The relevant parts of the section read as follows:

> all the lands not so allotted, the title to which is, by the said agreement of the confederated bands of the Ute Indians, and this acceptance by the United States, released and conveyed to the United States, shall be held and deemed to be public lands of the United States and subject to disposal under the laws providing for disposal of public lands, at the same price and on the same terms as other lands of the character, except as provided in this act: *Provided*, That none of said lands, whether mineral or otherwise, shall be liable to entry and settlement under the provisions of the homestead law; but shall be subject to cash entry only in accordance with existing law * * *.

This act was supplemented by the act of July 28, 1882 (22 Stat. 178), which provided that that portion of the Ute Reservation lately occupied by the Uncompahgre and White River Utes shall be "subject to disposal from and after the passage of this act, in accordance with the provisions and under the restrictions and limitations of section 3 of the act of Congress approved June 15, 1880 * * *." These provisions clearly bring the remaining undisposed of lands involved in this opinion within so much of section 3 of the Indian Reorganization Act as refers to remaining lands of an Indian reservation "heretofore opened * * * to sale, or any other form of disposal * * * by any of the public land laws of the United States."

III. Ceded Colorado Ute Lands as "Surplus Lands"

The key question in connection with the application of section 3 to the remaining Colorado Ute lands, is, in my opinion, the question whether these lands come within the designation of "surplus lands" in section 3. The word "surplus" means that which remains over and above what is required. It might be argued that practically all lands ceded by Indians were surplus lands according to this definition since they were doubtless considered as not being required by the Indians. However, Congress could not have intended that all remaining undisposed-of ceded lands should be available for restoration to tribal ownership, as such lands would embrace practically all of the remaining public domain. The "Interior Department" has taken the position that section 3 is not intended to cover all ceded lands but those ceded lands in which the Indians have retained an interest by reason of the fact that the lands were ceded to the United States to be disposed of by the United States in specified ways, the proceeds of the sale to be held for the benefit of the Indians. This type of ceded land "was evidently in the mind" of Congress at the time of the passage of the Reorganization Act. The debates on the bill in the Senate show that section 3 was discussed as a provision making possible the restoration of the use of the lands to the Indians in place of the proceeds to which they were entitled from any sale (Congressional Record, 73d Congress, 2d session, page 11135.)

The reference to surplus lands in section 3 of the Reorganization Act refers, however, primarily to surplus lands remaining after the actual or contemplated allotment of the Indians, such surplus lands having been ceded to be disposed of for the benefit of the Indians. The term "surplus lands" has been used commonly in connection with the allotment system and allotted reservations to refer to the lands not allotted or set aside for allotment and not reserved

for administrative or tribal purposes. In the consideration of section 3 in Congress, the term "surplus lands" was defined in this manner. (Senate Report of the Committee on Indian Affairs on S. 3645, No. 1080, 73d Congress, 2d session; Congressional Record 73d Congress, 2d session, page 11136.) The policy of the general allotment act and the allotment acts for specific reservations was to settle the individual Indians as farmers on individual tracts of land and to open the remainder of the reservation to disposal to white people. The purpose was different from that involved in previous disposals of Indian land since it was aimed at settling permanently and civilizing the individual Indians and at the same time opening their existing reservation to the advancing white settlers. The difference in purpose and effect between the conditional surplus land cession involved in the allotment acts and the previous type of cession in which the Indians were removed to another reservation to be held in common in the same manner as their previous reservation in which they then lost all interest is analyzed by the Supreme Court in the case of *Minnesota v. Hitchcock, supra.*

The 1880 cession agreement with the Colorado Ute Indians is one of the early examples of conditional surplus land cessions; in fact the provisions of the 1880 act set forth a plan of allotment and disposal of surplus lands which became stereotyped in later allotment acts. A commission was appointed to make a census of the Indians, to select lands to be allotted, to survey sufficient of these lands for allotment, and to cause allotments to be made. The provisions of section 3 of this act, quoted above, are significant in that they provide for the disposal only of those lands within the reservation "not so allotted." The legislative history of this 1880 act makes clear that the chief purpose of the act was the immediate allotment within the Colorado Ute Reservation of the individual Indians of various Ute bands and the opening to disposal of the remaining surplus lands. The opening up of the surplus lands was described as

essential in view of the thousands of settlers and prospectors on the borders of the reservation who could not successfully be kept from entering the reservation by military or other means. The plan of allotment of the Indians was favored and bitterly opposed as the entering wedge in the allotment of the tribes generally throughout the United States. In fact, a general allotment act was pending in that session of Congress. (See House debates on the 1880 agreement, Congressional Record, 46th Congress, 2d session, June 7, 1880, pages 4251-4263.)

From the foregoing it definitely appears that the fact that the cession occurred several years before other allotment-cessions does not mean that this cession falls within the earlier type of outright cession and removal. This cession was rather a forerunner and a model of later allotment acts and differs in no important respect from these later acts. The fact that two of the three main groups of Indians were subsequently not allotted within the borders of the Colorado Ute Reservation does not alter my conclusion. The 1880 act did not provide for establishing new reservations but for supplying the Indians with allotments, and where allotments occurred outside the reservation, the Indians were to be charged a price of $1.25 an acre to be paid from the proceeds of the land sold from the Colorado Ute Reservation. The allotments off the reservation were therefore in the nature of lieu allotments and, in the case of the Uncompahgre Utes, were made only because of the fact that insufficient agricultural lands were found within the Colorado Ute Reservation. (See Report of the Commissioner of Indian Affairs, 1881, at pages 19 and 325, *et. s. q.)*

There can be no doubt that the surplus lands remaining after allotment were to be sold for the benefit of the Ute Indians. The original agreement between the Government and the chiefs of the Confederated Bands of the Ute Indians which preceded the 1880 act contemplated an outright sale of the surplus lands remaining after allotment in considera-

tion of an annuity of $50,000. In Congress it was pointed out that there would be realized in one year from one mine within the Colorado Ute Reservation nearly 20 times the entire principal sum from which these annuities to the Indians would be paid. The land was described as rich in minerals and of great value. As a result of the realization of the complete inadequacy of the annuity as a consideration for the relinquishment of the Indian right of occupancy in these lands, and in order that "full justice" might be done the Indians, the original agreement was amended by the 1880 act to provide that after the United States had been reimbursed the amount of the annuities paid the Indians and other expenses connected with the act, any further proceeds received from the sale of the land should be placed to the credit of the Indians. (Congressional Record, 46th Congress, 2d session, June 7, 1880, page 4261, June 12, 1880, page 4487.) The amended agreement as embodied in the 1880 act was subsequently accepted by the requisite number of Indians of the Confederated Bands.

The amended agreement was described by the Court of Claims in the case of *The Ute Indians v. The United States, supra,* page 464, as entitling the Ute Indians to receive all proceeds of the reservation after the reimbursement and as providing for a transaction which was of no benefit to the United States, except the indirect benefit of opening a desirble territory to civilization. In the Court of Claims case the Indians were awarded a judgment for the value of the lands within the reservation which had been set apart for public reservations and thereby been excluded from sale. The Interior Department has consistently recognized that the Indians are entitled to the proceeds from the disposal of these lands. (3 L.D. 296); (7 L.D. 191); (47 L.D. 460.) The jurisdictional act which authorized suit in the Court of Claims provided that upon the rendition of final judgment the principal fund from which the annuities of the Indians were obtained should be abolished and from that date no further

annuities should be paid. As a result, therefore, since the 1910 decision the interest of the United States in the proceeds of the sale to the extent of $50,000 annually has not existed and the remaining undisposed of surplus lands within the reservation have been subject to disposal for the unencumbered benefit of the Indians.

IV. Effect of Declaration of Lands as "Public Lands"

From the foregoing it is my conclusion that the remaining undisposed of lands within the Colorado Ute Reservation are "surplus lands" within the meaning of section 3 of the Indian Reorganization Act. There remains only the question whether these lands must nevertheless be excluded from the scope of section 3 because of the fact that in the 1880 cession and in the subsequent act of 1882 it was provided that the lands not allotted "shall be held and deemed to be public lands of the United States." It has been urged that in the usual cession of surplus lands remaining after allotment no declaration that the lands ceded shall be public lands is made. As a consequence it is argued that these lands are not Indian lands in accordance with the holding in the case of *Ash Sheep Co. v. United States*, 252 U.S. 159. In that case the undisposed of ceded surplus lands of the Crow Reservation were held to be "Indian lands" within the meaning of a statute requiring the consent of the Indians to the use of the land for grazing purposes. The lands involved were ceded under the act of April 27, 1904 (33 Stat. 352), which provided that a designated portion of the reservation should be sold to the United States but that the United States should serve as trustee for the disposal of the lands for the benefit of the Indian.

In my opinion, the declaration in the 1880 act that the surplus ceded lands shall be public lands does not alter the fact that these lands are remaining surplus lands of an Indian reservation theretofore opened to disposal under the public land laws, within section 3 of the Indian Reorganization Act, even if the declaration lessened the interest of the Indians in the lands ceded during the time they were held by the United States and before they were sold. However, it is also my opinion that this declaration did not make the 1880 cession different in legal effect from the Crow cession or other usual surplus land cessions where the Indians were to receive the proceeds of the sale. The significant legal effect of these cessions is that the United States becomes a trustee for the disposal of the land ceded. Regardless of the particular language of the cession, the result is that the Indians retain an equitable interest in the land until they have received the consideration bargained for, and the United States becomes a "trustee in possession." *Minnesota v. Hitchcock, supra; Ash Sheep Co. v. United States, supra.*

Surplus ceded lands to be disposed of for the Indians are frequently referred to in acts of Congress and departmental actions both as public lands and Indian lands. An example of the application by Congress of the term "public domain" to ceded surplus lands which would be "Indian lands" under the *Ash Sheep Co.* case, *supra*, occurs in the act of May 29, 1908 (35 Stat. 460), under which the Cheyenne River and Standing Rock Reservations in South Dakota were allotted. In this act it was provided that the Indians might use the timber upon the ceded surplus lands so long as these lands remained a part of the "public domain," and yet the act provided that the United States should act only as trustee for the Indians in the sale of the lands. In the act of Congress dismembering the Great Sioux Reservation, a provision that the unreserved lands shall be restored to the public domain is used in two places with obviously different meanings. In section 21 it is provided that the unreserved land shall be "restored to the public domain" to be disposed of to actual settlers only, the proceeds to go to the Indians. However, it is then provided that if the lands are not disposed of at the end of 10 years, they shall be paid for by the United States at a designated rate, and that the lands so purchased should

then become "a part of the public domain." The first provision restoring the lands to the public domain could have had no legal effect to alter the equitable interest of the Indians in the land until sold or purchased by the United States.

The evident purpose of designating lands ceded for disposal for Indian benefit as public lands or public domain is to indicate that the lands are subject to disposal under public land laws. Lands so designated by Congress would seem therefore to be peculiarly within rather than without the scope of section 3 of the Indian Reorganization Act which refers to lands subject to disposal under the public land laws.

Surplus lands ceded to be disposed of for the Indians are in fact qualifed public lands and also qualifed Indian lands. They are public lands in that the United States has the legal title and has secured from the Indians a release of their right of occupancy and has arranged to dispose of them, but they are not public lands in the full sense of the term as they are to be disposed of only in limited ways and upon certain conditions. *Minnesota v. Hitchcock, supra.* It should be noted that both the 1880 and 1882 acts concerning the Ute land qualifed the reference to the land as public land and subject to disposal under the public land laws by stated conditions and restrictions.

Surplus lands are also properly designated as Indian lands in view of the interest of the Indians in the proceeds of any disposal of the lands. This equitable interest is the significant condition attached to the lands which distinguishes them from the public lands generally as Indian lands. Since this condition was attached to the lands ceded by the Confederated Bands of Utes, the undisposed of lands may be as appropriately termed Indian lands as the lands ceded by other Indian tribes to be disposed of for their benefit. Under the regulations of the Interior Department of July 25,

1912, for governing the use of vacant ceded land (Regulations of the General Land Office, 1930, page 669) it was contemplated that remaining suprlus lands, the proceeds of the disposal of which were for the benefit of the Indians, would be cooperatively administered by the Indian Office and the General Land office, the Indian Office retaining jurisdiction of the use of the lands before they were sold and the General Land Office administering the final disposition of the lands. It is true that this administration by the Indian Office has not occurred in connection with these surplus Colorado Ute lands. The reason for that, however, is not the result of any legal difference but the result of practical considerations since the Indians were in fact allotted only in the southern part of the reservation, and since the suprlus lands covered a vast area.

V. Summary of Conclusions

In view of the foregoing considerations, and in summary of my conclusions, it is my opinion that the undisposed of lands in Colorado ceded by the Confederated Bands of Ute Indians under the act of June 15, 1880, subject to the provisions and conditions set forth in that act, come within the designation in section 3 of the Indian Reorganization Act of remaining surplus lands of any Indian reservation open to disposal by the public land laws, and that they are, therefore, available for restoration to tribal ownership, provided the Secretary of the Interior finds the restoration to be in the public interest. It is immaterial as a matter of law whether the area to be restored is adjacent to the Southern Ute Reservation.

Approved: June 15, 1938.

Oscar L. Chapman,

Assistant Secretary.

[#60]

Patent of Gustav Gnirk, Dec. 5, 1910

The United States of America
To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Register of the Land Office at Gregory, South Dakota, has been deposited in the General Land Office, whereby it appears that full payment has been made by the claimant Gustav Gnirk according to the provisions of the Act of Congress of April 24, 1820, entitled "An Act making further provision for the sale of the Public Lands," and the acts supplemental thereto, for the Northwest Quarter of Section Nine in Township Ninety-Seven North of Range Seventy West of the Fifth Principal Meridian, South Dakota, containing one hundred sixty acres, according to the Official Plat of the Survey of the said Land, returned to the GENERAL LAND OFFICE by the Surveyor-General.

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said claimant and to the heirs of the said claimant the Tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenancies, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts.

IN TESTIMONY WHEREOF, I, WILLIAM H. TAFT, President of the United States of America, have caused

these letters to be made Patent, and the seal of the General Land office to be hereunto affixed.

Given under my hand, at the City of Washington, the Fifth day of December in the year of our Lord One Thousand Nine Hundred and Ten and of the Independence of the United States the One Hundred and Thirty-Fifth.

[SEAL]

By the President: William H. Taft
By W. P. LeRoy, Secretary
Recorder of the General Land Office

RECORDED: Patent Number 164123